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THE BILLS OF EXCHANGE ACT, 1890.

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THE
BILLS OF EXCHANGE ACT, 1890

AN ACT TO CODIFY THE LAWS RELATING TO

Bills of Exchange, Cheques and Promissory Notes

Passed by the Parliament of Canada, 53 Vic., ch. 33

WITH NOTES AND COMMENTS

ALSO

A REFERENCE TO THE ENGLISH, AMERICAN AND FRENCH DECISIONS
AND TO ALL THE CANADIAN REPORTED CASES

AN APPENDIX CONTAINING THE FRENCH TEXT OF THE ACT
DEBATES OF PARLIAMENT
CIVIL CODE OF LOWER CANADA, ETC.

AND

AN ANALYTICAL INDEX

BY

DÉSIRÉ GIROUARD. D. C. L., Q. C., M. P.

AUTHOR OF "ESSAI SUR LES LETTRES DE CHANGE ET LES BILLETS
PROMISSOIRES (1860)," "REVIEW OF INSOLVENT ACT OF 1864," &c.

AND

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MONTREAL

JOS. M. VALOIS, BOOKSELLER AND PUBLISHER

1626, NOTRE DAME STREET, 1626

1891

Entered according to the Act of the Parliament of Canada, in the year 1891, by Jos. M. VALOIS, in the office of the Minister of Agriculture.

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INTRODUCTION.

Bills of exchange, cheques and promissory notes are the shortest and most concise legal instruments of which the commercial world makes use. Yet each and all of them have been prolific of judicial controversies. A recent author,¹ who has not only exhaustively reviewed, but even counted all the English cases, finds that the courts have pronounced no less than 2,500 judgments thought worthy of being reported. Although the first of these dates back as far as 1603, the decisions are, up to the time of Lord Mansfield, comparatively few and unimportant. In some of the later American works,² no less than eleven thousand precedents appear, while the Canadian jurisprudence is represented by some two thousand cases scattered through the reports of the different provinces. The reporting of two hundred cases means on an average a volume in space, so that the English, American and Canadian reports alone, without taking into account the *arrêts* of France, would form in the neighborhood of 75 volumes already published. Add to these formidable figures, digests and treaties to the number of 25 or 30, and the result is an array of some 125 volumes written in the English language upon the subject of negotiable instruments. It is impossible therefore not to look forward with some discouragement upon the ponderous volumes which the next half century will heap upon the groaning shelves of jurists. Codification alone can avert the calamity which threatens lawyers and judges of being buried alive in the labyrinths of the law. In France, where the laws on bills of exchange and promissory notes have been codified, first in 1673 by the Colbert Ordonnance, and secondly and more perfectly in 1807, by the *Code de Commerce*, the number of reported cases does not exceed fifteen hundred.

¹ Chalmers, on Bills of Exchange, xxxvi.

² Daniel and Randolph.

In England, the work of codification has only begun but seems to be going on in earnest. In 1882, the British Parliament adopted "An Act to codify the law relating to Bills of Exchange, Cheques and Promissory Notes," 45 and 46 Vic., c. 61. During the last session of Parliament, the laws relating to Partnerships were codified. A criminal code and a code on Joint Stock companies are promised in the near future, and before many years, it is stated England will have a complete code of laws. Her colonies will not be slow in following the example of the mother country.

Until the Civil Code came into force in 1866, uncertainty of derivation was, in the Province of Quebec, added to uncertainty of jurisprudence. Our courts were frequently puzzled and divided as to the sources of law to which they had to turn for inspiration. Their guide, in some instances, was the rules of the old French law, as it existed at the time of the cession in 1763. However, it was contended that the ordonnance of 1673 was not always a safe guide, as it was not in force in Canada for want of registration by the Superior Council of Quebec. Therefore, the old text books had to be carefully looked into, to ascertain to what extent the ordonnance had altered the law. Modern commentators had also to be consulted as far as they were deemed the exponents of the old law. Finally the English law was introduced in 1849, to be applied in all cases when the existing law was silent.¹ The Canadian statutes had likewise to be the object of careful consideration. Hence the confusion which existed in the province until the codification.

These elements of controversy were largely removed by the Civil Code of Lower Canada, which came into force on the 1st August 1866. Art. 2340 says: "In all matters relating to bills of exchange not provided for in this Code, recourse must be had to the laws of England in force on the 30th day of May, one thousand eight hundred and forty-nine." See also art. 2340. To the business man, for whom this work is principally intended, any further reference to this once contro-

(1) 12 Vic., c. 22, s. 35.

versial subject and student, is always in the authorities published by the de change et

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versal subject would be without value. The lawyer and student, however, to whom legal historical research is always interesting and often essential, will find all the authorities collected and discussed in a little work published by the author in 1860: "Essai sur les Lettres de change et les Billets promissoires."

By the Confederation Act of 1867, the Parliament of Canada was given exclusive jurisdiction over (sec. 91) "the regulation of trade and commerce, currency and coinage, banking, banks and savings banks, the issue of paper money, bills of exchange and promissory notes, interest, legal tender, bankruptcy and insolvency." In the exercise of this power and moved by urgent public need, Parliament, at its last session, passed the Act, the discussion of which forms the purpose of this work, whereby the then existing statutes were consolidated, a few important changes made in the laws relating to negotiable instruments, and all the articles of the Code from 2279 to 2354, both inclusive, wholly repealed, save in so far as any of them, dealing with matters relating to evidence, came within the authority of the Provincial Legislature. It must be added, however, that the most important provisions of the Code have been embodied in the Act.

The Bill, as introduced in the Commons during both sessions of 1889 and 1890, contained the following provision: "The rules of the common law of England, including the law merchant, save in so far as they are not inconsistent with the express provisions of this Act, shall continue to apply to bills of exchange, promissory notes and cheques." (Sec. 97.) This section is not to be found in the Act as passed. It was struck out in the Senate, without any discussion. Pages 461, 511. The effect of this elimination will not be very much felt, as the bill is a complete code in itself, covering the entire subject of bills of exchange, cheques and promissory notes. In the Province of Quebec, in unprovided or doubtful cases, recourse must be had to the Civil Code, and in the event of the silence of the latter, to the laws of England in force on the 30th of May, 1849. See Interpretation Act, Ca. Rev. St., ch. I, s. 48 and *seq.*

History of the
Act

The Bills of Exchange Act, 1890, s. 95, has also repealed chapter 123 of the Revised Statutes of Canada: "An Act respecting Bills of Exchange and Promissory Notes;" also chapter 82 of the Revised Statutes of Nova Scotia, 3rd series: "Of Bills of Exchange and Promissory Notes;" and finally chapter 116 of the Revised Statutes of New Brunswick: "Of Bills, Notes and Choses in action," and an act passed in 1867, 30 Vic., c. 34, amending the same. These statutes are repealed only in so far as they are inconsistent with the provisions of the new Act. Therefore in cases not expressly or impliedly dealt with therein, the student and lawyer, in all other provinces than Quebec, must resort to the common law of England and such statutes as were in force in the respective provinces before the promulgation of the Bills of Exchange Act. These cases will of course be of seldom occurrence, as the Act is a codification of all the Canadian statutes, intended to introduce, with few modifications, the provisions of the English Act of 1882.

When introducing the Bill in the session of 1889, the Minister of Justice, Sir John Thompson, said: "The object of this Bill is to render uniform in almost every respect the laws throughout the Dominion with respect to these contracts. The law under this Bill will be uniform in every particular, except as regards statutory holidays, in respect of which special provision is to be made as regards the Province of Quebec. I may say that the Bill is principally the codification of the existing law relating to bills, cheques and promissory notes and that the changes which are made in our law on these subjects are in the direction of making it uniform with the English statute law."

English Act
and writers.

The Imperial Bills of Exchange Act, 1882, which we have thus accepted as a model, is an admirable specimen of commercial law making. It may be said to be the offspring of an elaborate digest compiled a few years previously by judge Chalmers. Ere becoming a statute, its principles and language were subjected to the experience and criticism of committees of the Lords and Commons and of the Institute of Bankers, which

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sat respectively under the presidency of Lord Bramwell, Sir Farrer Herschell and Sir John Lubbock. Our own statute was also, during two sessions, considered with great care by both Houses of Parliament, under the direction of two of our ablest lawyers, Sir John Thompson, in the Commons, and the Honorable J. J. C. Abbott, in the Senate.

In consulting text books and referring to cases based on the Imperial Act, it must be borne in mind that its language has been in many instances modified and in others wholly displaced by local laws and usages, preferred by the Canadian Parliament. Whenever our legislation is doubtful or silent, it is not to the English statute, but in Quebec to the Civil Code, and in the event of its silence, to the English laws in force on the 30th May 1849, that we must adhere to for guidance. In such cases, therefore, the works of Byles, Bayley, Chitty, Ross, Thompson, Thorburn and especially Chalmers, will commend themselves to the attention of counsel. Lord Esher recently referred to Chalmer's book as being "very able and useful" (1). The little manual of Mr. Clarke, Barrister of Osgoode Hall, Toronto, published in 1875, should not be overlooked.

The new Act has given rise to a large number of books on the subject of bills of exchange and promissory notes. The public is already in possession of one, by Thomas Hodgins, M. A. Q. C., of Toronto, whilst two or three others by prominent members of the Ontario Bar have been announced. Such an outcome of the Act could hardly have been anticipated so soon, in a community where lawyers are constantly engaged in active practice, and cannot in consequence contribute extensively to legal works and literature. Had it been possible to foresee the future, when the prospectus of this book was published in June last, its preparation might not have been undertaken. Coming from the Province of Quebec, from which many principles of the Act have been borrowed, it may, it is hoped, help to explain the work of codification intended by Parliament.

(1) *Vagliano v. Bank of England*, 1889, L. R., 28 Q. R. D., 247.

French writers.

It must indeed not be imagined that French authorities are to be wholly ignored, even in a province governed by the English common law. In commercial pursuits, the rules prevailing among merchants in the different parts of the world, are largely alike. "In mercantile matters, says Chalmers, when the law is uncertain or authority wanting, there is an increasing tendency to refer to foreign codes and laws, in order to see how other nations have solved the difficulty. This is especially the case as regards negotiable instruments, the most cosmopolitan of all contracts."

Of all continental authors, the venerable Pothier may be consulted with the greatest advantage and confidence. His treatise on bills of exchange, published in 1763, has been incorporated, almost *verbatim*, into the codes of his own country and of all Europe and South America. Lord Mansfield, Lord Ellenborough, Mr. Justice Byles, Mr. Justice Bayley, Lord Best and Lord Blackburn considered him a high authority on questions involving commercial contracts. Among other French writers to whom reference might, at times, be found of use, are Cleirac, Savary, Dupuy de la Serra, Toubeau, Rogue, Jousse, Bornier, Pardessus, Persil, Locré, Vincens, Massé, Boistel, Nouguier, Bédarride and Alauzet. The books of Story, Parsons, Daniel, Bigelow, Edwards, Randolph and Tiedeman are all standard American works on bills of exchange and promissory notes.

Foreign laws.

Egypt, Greece, Turkey, Belgium, Holland, Spain, Portugal, Bolivia, Chili, Columbia, Costa Rica, Ecuador, Nicaragua, San Domingo, Uruguay, Venezuela, the Argentine Republic and Mexico have adopted the provisions of the French code in their entirety. In 1883, Italy substantially borrowed the provisions of the German Exchange Law. In the United States of America, the English common law is generally followed. In a few of them, notably California and Dakota, this important branch of the law has been codified. Mr. Randolph informs us that since the passing of the English Bills of Exchange Act, an effort has been made to procure the enactment of a similar law by the Congress of the United States, but that, at the outset, it was met by

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grave questions as to the constitutional power of Congress in the matter. It is to be hoped that the day is not far distant when all the commercial nations of the world will act upon the report of the International Commission, appointed at the Hague in 1875, and agree upon a universal code of laws respecting negotiable paper. Without waiting for this most desirable legislation, it will be advisable that every portion of the British Empire should adopt the British Code. New Zealand, New South Wales and Canada have already done so, and every British colony should follow their example. India has also its code based upon the English law.

The origin of bills of exchange, in Europe, has been a subject of hot discussion among legal antiquarians. There is now a pretty well settled opinion that their creation is due to the Jews after their expulsion from France, in 1186. A statute of Avignon, dating so far back as 1243, devotes a whole chapter to this instrument, *De Litteris Cambii*, and one of Marseilles, dated 1253, presents evident traces of them. A Venetian law of 1272 and a charter of Hamburg, in 1189, also refer to them. Anderson, on Commerce, vol. I, p. 171, says that at the latter period they were "very new in Europe." Hume (Hist. Engl., ch. 12) states that in the year 1255, the bishop of Hereford, while in Rome, drew bills upon the bishops and abbots of the kingdom and granted them to Italian merchants. It is even supposed that king John used letters of credit and bills of exchange, in 1202 and before that year, to remit money to his agents at Rome (').

Promissory notes, being "choses in action," were not negotiable in England until made so by a statute of Queen Anne, in 1705. Bills payable to bearer only came into use in 1765; but spite of laws to the contrary, they have belonged to the commercial life of France since 1630. According to Savary, the negotiability of bills and notes in France dates from 1620.

It may be interesting to remark that it was formerly essential to the validity of a bill of exchange to be

(1) See Parsons, Bédarride and Alauzet.

drawn in one place and payable in another, or that what is termed *la remise de place en place* should be observed. The *Encyclopædia Britannica*, 8th ed., 1861, vo. Exchange, still defines a bill of exchange "an order addressed to some person residing at a distance, directing to pay, etc." But this rule is now universally obsolete, although still to be found in several commercial codes of Europe. A bill of exchange has come to have more of the nature of currency than of a trade operation.

La remise de place en place is now no longer required in Germany, Russia and Italy; and most eminent jurists, such as Asser, Rolin-Jacquemyns, Namur, Lyon-Caen and Renault adopt the views entertained by Einert, the framer of the celebrated German Exchange Law of 1848, and by Vidari, in his treatise, "*La Littera di Cambio*," and express the hope that a revision of the codes will obliterate altogether this relic of the French law. "*Ce sera*," observes M. Asser, "*un pas important dans la voie de l'uniformité du droit concernant la lettre de change, si désirable dans l'intérêt du monde commercial.*" 2 *Revue de Droit International*, 507; 11 id., 470; 14 id., 353; 16 id., 532.

Changes made
by the Act.

It may be useful to briefly note some of the special features of the new Canadian Act. A note not implying a promise to pay, for instance I. O. U., is not a promissory note. s. 82.

Where a bill was payable to bearer, its negotiability under the old law was not affected by a subsequent restrictive indorsement, but it will be otherwise under sections 8 (3) and 34, 35.

A bill is no longer invalid by reason only that it bears date on a Sunday. s. 13 (2).

A bill, payable to a particular person, but not containing words prohibiting transfer, is now negotiable. s. 8 (4).

The holder of a bill, containing the name of a referee in case of need, was bound to present himself to the latter, but now this formality is optional. s. 15.

Under the old law, a forged bill was wholly inoperative, but by an amendment offered by the Senate

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and assented to by the Commons, if a cheque payable to order be paid by the drawee upon a forged indorsement out of the funds of the drawer, the latter shall have no right of action against the drawee to recover back the amount so paid, unless he gives notice in writing of such forgery to the drawee within one year of his acquiring notice of such forgery. s. 24.

Hereafter, a bill, not accepted on the day of presentment or within two days thereafter, must be treated as dishonored for non-acceptance. s. 42.

Under the laws of some of the provinces, a written acceptance was not necessary. Under the new Act, as formerly in most of the provinces, the acceptance must be on the bill itself. ss. 17 and 64.

Heretofore in Ontario, Manitoba and Prince Edward Island, an acceptance to pay at a particular place was a general acceptance, unless it stated that it was payable there "only and not elsewhere." Under the new Act, an acceptance to pay at a particular specified place, with or without the words "there and not elsewhere," is not conditional or qualified. ss. 19 (a) and 52 (2).

The practice prevailing in Ontario and other provinces and sanctioned by a well-settled jurisprudence that a bill or note payable at a bank or other particular place, without the words "there and not elsewhere," may be presented for payment at the particular place or to the acceptor or maker, cannot be continued; the bill or note, in such a case, must be presented for payment at the bank or other particular place; otherwise the drawer and indorser will be discharged. ss. 45 (d). 86.

If a bill be payable at a particular place, it must be presented for payment at that place, else the holder may have to pay the costs of suit taken against the acceptor or maker, if for instance the latter show that provision for the payment of the bill had been made at that particular place. ss. 52 and 56.

Heretofore a protest could be made after one o'clock in the afternoon, but under section 51 (b) it must be made "at any time after three o'clock in the afternoon."

Where authorized by agreement or usage, a present-

ment for acceptance or payment through the post office is sufficient. ss. 41 (*d*) and 45 (*b*).

Under the old law, at least in Quebec, notice of dishonor was given, at the same time, by the holder to all the parties entitled to it, but under section 49 [2] the practice of giving notice in turn, which prevailed in England and United States, has been sanctioned.

Until now, presentment for payment by the holder had to be made on the afternoon of the last day of grace, but under the Act, it can be made at any reasonable hour of the last day of grace, whether in the forenoon or the afternoon. s. 45 [*a*] and [*c*]. Presentment by the notary must be made after 3 o'clock. s. 51 (*b*).

An acceptance for honor cannot be offered after protest for non-payment, but only after protest for non-acceptance or for better security, and before maturity of the bill. s. 64.

The acceptor for honor must receive notice of the protest for non-payment. s. 65.

The protest for better security is a novelty.

An acceptor for honor or under protest is no longer bound to give notice of his acceptance.

A drawer or indorser, receiving notice of a qualified acceptance, must express his dissent to the holder within a reasonable time, if he does not wish to be deemed to assent to the same. s. 44 [3].

In the future, a person signing a bill otherwise than as a drawer or acceptor, for instance as a guarantor or *donneur d'aval*, shall be treated as an indorser and as such entitled to protest. s. 56. Formerly a *donneur d'aval* was liable in the same manner and to the same extent as the person on whose behalf he became a guarantor, and was not entitled to any protest apart from the latter.

Heretofore, a bill payable on demand could be protested at any time before the statute of limitations was acquired, but under the Act, it must be protested within a reasonable time. ss. 45 [*b*] and 85.

Under the new Act, a bill signed under the seal of a corporation, is negotiable, s. 90 [1], and a bill payable

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according to the current rate of exchange of a certain place, to be ascertained as directed by the bill, is a bill of exchange, s. 9 [d]. The law seems to have been otherwise, at least in some of the provinces.

It is no longer necessary for a notary to write on a dishonored bill the words "protested or noted for non-acceptance or non-payment," as the case may be.

Under the Code, service of the notice of protest, whether for non-acceptance or for non-payment, could be made at any time within three days after the last day of grace, but under the Act, it must be given not later than the next following business day, as is practised in Ontario under the present law. s. 49 [4].

A notice of protest had to be mailed "in the nearest post office," but now it will be sufficient to deposit the same "in any post office." s. 49 [4].

The protest or noting for non-payment must be made after three o'clock in the afternoon of the last day of grace, ss. 51 (b). Noting is to be a preliminary step to protest, instead of being a distinct formality or deed. ss. 51 and 92.

Under the Code, when a bill contains the words "value received," value is presumed to have been received on the bill; but under the Act, whether the words "value received" appear upon the face of the bill or not, that presumption exists. s. 30.

Under the Code, the indorsee of an overdue bill takes it subject to all the objections and equities to which it was liable while in the hands of the endorser, whether they attach to the bill or some collateral matter; but under the English law prevailing in Ontario and under the Act, such endorsee will not be affected by such collateral matter, like a set-off. s. 36 (2).

In Quebec a cheque or bill does no longer operate as an assignment of funds in the hands of the drawee. s. 53.

The practice of crossing cheques prevailing in England for some years to guard against loss, larceny or fraudulent negotiation by an agent or clerk, has been sanctioned by sections 75 and following.

The damages of two or four per cent. allowed by the

Civil Code and also by provincial statutes upon bills returned under protest from Europe or the West Indies, or any British province of North America, or the United States, have not been re-enacted by the Act, s. 57.

The statute discloses other changes in our existing laws and usages, but these as being of lesser importance, are sufficiently noticed in the body of the book.

The plan pursued in the preparation of the present work is that adopted by the statute. The text of each clause will be first given to be followed by a digest of all Canadian reported cases and of the leading English, American and French decisions, and also such notes and comments as may be deemed appropriate. The references to be found under the articles of the Civil Code of Lower Canada, will be reproduced in an appendix, together with the articles of the Code and the repealed Canadian and provincial statutes, in order to show to what extent the old decisions continue to apply.

The Appendix also contains the debates of the Canadian Commons and Senate when the Act was under their consideration.

The decisions upon actions on bills and notes and all matters of procedure, coming within the exclusive jurisdiction of the provincial legislatures, have generally been omitted, as being matters of local interest, and frequently at variance according to the rules of practice particular to each province.

The Act, which contains 97 sections and 295 subsections, came into force on the first day of September 1890.

D. GIROUARD,
D. H. GIROUARD.

Montreal,
2nd. January, 1891.

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ABBREVIATIONS EXPLAINED.

A

- Ad. & E.—Adolphus and Ellis, English.
- Ala.—Alabama Reports, U. S.
- A. or Al., N. B.—Allen's Reports, New Brunswick.
- Allen—Reports, Massachusetts.
- Alauzet—Code de Commerce, 3rd ed., 1879. The 4th vol. devoted to Bills of Exchange.
- Am. L. Reg.—American Law Register.
- Am. R.—American Reports.
- A. R.—Appeal Reports, Ontario.
- A. or An. or La. An.—Louisiana Annual Reports.
- Ark.—Arkansas Reports.
- Atk.—Atkyns Reports, English.

B

- B. & C. or Barn. & Cres.—Barnewell & Cresswell Reports, English.
- Boullenois—De la Personnalité et de la Réalité des lois, ed. 1872.
- Boistel.—Cours de Droit Commercial, 3rd ed. 1884-87.
- B. & B. or Brod. & B.—Broderip and Bingham Reports, English.
- B. or C. B.—Common Bench Reports, English.
- B. N. P.—Buller's Nisi Prius, English.
- B. & P. or Bos. & Pul.—Bosanquet and Puller Reports, English.
- B & S.—Best and Smith Reports, English.
- Barb.—Barbour Reports, U. S.
- Bédarride, 2nd ed., 1877—De la Lettre de Change, etc., in 2 vols.
- Bigelow—The Law of Bills, Notes and Checks, 2nd ed. 1880.
- Bing.—Bingham Reports, English.
- Bing., N. C.—Bingham New Cases, English.
- Bli.—Bligh's Reports, English.
- Bli., N. S.—Bligh's New Reports.
- Bornier.—Commentaires.
- Burgé.—Colonial and Foreign Laws, ed. 1838.
- Burr.—Burrow's Reports, English.
- Byles.—1st ed. 1839. Am. ed. of 1848 and 11th English ed. 1868 are used in this book.

C

- Cass.—A decision of the "Court de Cassation" of France, quasiing a decision of an inferior Court.
- C. C.—Civil Code of Lower Canada.
- C. C.—County Court, Ontario.
- C. B., N. S.—Common Bench Reports, New Series, English.
- C. B.—Common Bench Reports, English.
- C. L. T.—Canada Law Times, Ontario.
- C. L. J.—Canada Law Journal, Ontario.
- C. & M.—Carrington and Marshman Reports, English.
- C. N.—Collection Nouvelle or New series of Villeneuve and Carette.
- Car. Crompt. & J.—Carrington, Crompton & Jervis Reports, English.
- " " & M.— " & Meeson, English.
- " " M. & R.— " Meeson & Roscoe, English.
- C. P. D.—Law Reports, Common Pleas Division, English.

- C. & P.—Carrington & Puller Reports, U. S.
- Ca. 2 S. C. 200—page 200.
- Cal.—California Reports, U. S.
- C. or Camp. N. B.—Campbell's Reports, New Brunswick.
- Cass. B.—means Chalmers, 3rd ed. range, etc."
- Chassé.—Droit Commercial, 3rd ed.
- Chitty on Bills of Exchange, 2nd ed.
- Chy. D.—Law Reports, Chitty, 2nd ed.
- Clarke.—Bills of Exchange, 2nd ed.
- Chy.—Chancery Reports, 1659.—Chy. D.—means Chy. B. D.— " C. P.— " Conn.—Connecticut Reports, U. S.
- Cowp.—Cowper's Reports, U. S.
- Cow. or Cowen.—Cowen's Reports, U. S.
- D. A. 3, 566, means Division of Appeals, 3rd ed.
- D. C.—Division of Appeals, 3rd ed.
- D. or D. P. S. 28, part 1, page 289.
- Daniel.—On negotiable Instruments, 2nd ed.
- Denio—Reports, U. S.
- Dra.—Draper's Reports, U. S.
- Dupuy or Dupuis—Reports, U. S.
- E. & A... Error and Appeal, 2nd ed.
- E. & B. or El. & B.—Error and Appeal, 2nd ed.
- El. B. & E.—Ellis, B. & Ellis, 2nd ed.
- Eng. C. L. R.—English Reports, 1st ed.
- E. & E. or El. & E.—Error and Appeal, 2nd ed.
- E. L. & Eq. R.—Error and Appeal, 2nd ed.
- Endlich, 1st ed., 1811, "statutes."
- East.—East Reports, U. S.
- Esp.—Espinasse Reports, U. S.
- Exch.—Exchequer Reports, U. S.
- Fiore—Droit International, 2nd ed.
- Fla.—Florida Reports, U. S.
- Freméry.—Etudes de Droit, 2nd ed.
- Ga.—Georgia Reports, U. S.
- Gilbert sur Sirey.—Gilbert's Reports, U. S.
- G. & O.—Geldert & Oude, 2nd ed.
- Gray Reports, U. S.

- C. & P.—Carrington & Payne Reports, English.
 Ca. 2 S. C. 200—Reports of the Supreme Court of Canada, vol. 2,
 page 200.
 Cal.—California Reports.
 C. or Camp. N P.—Campbell Nisi Prius, English.
 Cass. B.—means Cour de Cassation, Belgium.
 Chalmers, 3rd ed. 1887, "A Digest of the Law of Bills of Ex-
 change, etc."
 Chassé.—Droit Commercial, ed. 1874.
 Chitty on Bills of Exchange, Checks, etc., 11th Am. ed. 1849.
 Chitty on Bills of Exchange, 8th ed. 1833.
 Chy. D.—Law Reports, Chancery Division, English.
 Clarke.—Bills of Exchange, Toronto, 1st ed. 1875.
 Chy.—Chancery Reports (Grant), Ontario.
 Cleirac 1659.—Commerce de la Banque et des Lettres de Change.
 Chy. D.—means Law Reports, Chancery Division, English.
 Q. B. D.— " " Queen's Bench Division, English.
 C. P — " " Common Pleas Division, English.
 Conn.—Connecticut Reports.
 Cowp.—Cowper's Reports, English.
 Cow. or Cowen.—Cowen's Reports, U. S.

D

- D. A. 3, 566, means Dalloz, Collection Alphabétique, vol. 3, p. 566.
 D. C.—Division Court, Ontario.
 D. or D. P. S. 28, 1, 289.—Means Dalloz, Recueil Périodique, vol.
 part 1, page 289.
 Daniel.—On negotiable instruments, ed. 1876, 2 vols.
 Denio.—Reports, U. S.
 Dra.—Draper's Reports, Ontario.
 Dupuy or Dupuis de la Serra.—L'art des Lettres de Change.

E

- E. & A... Error and Appeal Reports, Ontario.
 E. & B. or El. & Bl.—Ellis and Blackburn Reports, English.
 El. B. & E.—Ellis, Blackburn and Ellis Reports, English.
 Eng. C. L. R.—English Common Law Reports, American edition
 English reports.
 E. & E. or El. & El.—Ellis and Ellis Reports, English.
 E. L. & Eq. R.—English Law and Equity Reports.
 Endlich, 1st ed. 1882.—"A commentary on the Interpretation of
 statutes."
 East.—East Reports, English.
 Esp.—Espinasse Reports
 Ex.—Exchequer Reports, Welsby, Hurlstone and Gordon, English.

F

- Fiore.—Droit International Privé, Paris, 1875.
 Fla.—Florida Reports.
 Fréméry.—Études de Droit Commercial, ed. 1833.

G

- Ga.—Georgia Reports.
 Gilbert sur Sirey.—Les Codes Annotés, 9th ed. 1870.
 G. & O.—Geldert and Oxbey Reports, Nova Scotia.
 Gray Reports, U. S.

H

- H. & C.—Hurlstone and Coltman's Reports, English.
 H. & N.—Hurlstone and Norman's Reports, English.
 Han.—Hanna Reports New Brunswick.
 Hawthorne.—What Instruments are negotiable, 1st ed. 1889.
 Hill Reports, U. S.
 Holt N. P. or N. P. C.—Holt Nisi Prius Cases, English.
 Horson.—Questions sur le Code de Commerce, ed. 1829.
 How.—Howard's Reports, U. S.

I

- Il.—Illinois Reports, U. S.
 Ind.—Indiana Reports.
 Iowa.—Iowa Reports.

J

- James Reports, Nova Scotia.
 Johns.—Johnson Reports, U. S.
 Jousse.—Commentaires.
 J. P. or P., 39, 2, 532.—Means Journal du Palais, year 1839, page 532.
 J. P.—Justice of the Peace Reports, English.
 Jur. N. S.—Jurist, New Series, English.

K

- Kan.—Kansas Reports.
 Kerr.—Kerr's Reports, New Brunswick.

L

- L. C. L. J.—Lower Canada Law Journal.
 L. C. C. C.—Civil Code of Lower Canada.
 L. C. R.—Lower Canada Reports.
 L. C. J.—Lower Canada Jurist.
 Locré.—Esprit du Code de Commerce, ed. 1829.
 L. J. or L. J. N. S. Chy.—Law Journal Chancery, New Series, English.
 " " " Q. B.— " Queens Bench "
 " " " C. P.— " Common Pleas "
 L. N.—The Legal News, Quebec.
 L. R. Chy.—Law Reports Chancery, English.
 " Eq.— " Equity, "
 " Chy. D.— " Chancery Division, English.
 " C. P.— " Common Pleas "
 " C. P. D.— " " Div. "
 " Q. B.— " Queen's Bench "
 " Q. B. D.— " " Div. "
 " P. C.— " Privy Council, "
 L. J.—Law Journal, English.
 Ld. Ray.—Lord Raymond's Reports, English.
 Louis.—Louisiana Reports.
 L. R.—Law Reporter, Quebec.
 L. T., N. S.—Law Times, New Series, English.
 L. T.—Law Times, English.

M

- M. C. R.—Montreal Condensed Reports.
 M. L. R., 1 S. C., 200.—Montreal Law Reports, 1 Superior Court, page 200.

- M. L. R., 1 Q. B., 2
 M. & M. or Moo. &
 M. & R. or MacL. &
 M. & S. or Moo. &
 M. & W. or Mee. &
 M. & W.—Meeson
 Macq.—MacQueen
 Ma. R.—Manitoba
 Mareschal, 1625.—
 Marsh.—Marshall's
 Martin.—Martin's
 Martin N. S.—Mart
 Merlin.—Répertoire
 Mass.—Massachus
 Md.—Maryland Rep
 Mich.—Michigan R
 Minn.—Minnesota
 Miss.—Mississippi R
 Mo.—Missouri Rep
 Mod.—Modern Rep
 Moo. P. C.—Moore's
 Moo. & S.—Moore a
 Mood. & M.—Moody
 Morawetz, 2nd ed. 18
 tions, in 2 vols.

- Namur.—Cours de D
 N. B., 4. A. or 4. A1
 N. B.—New Brunsw
 N. H.—New Hamps
 Nonguiet, 2nd ed. 18
 es de change, etc."
 Nonguiet, 4th ed. 18
 de to ed. 1851 or 18
 N. S. D.—Nova Scot
 N. S. R.—Nova Scot
 N. B. Stevens.—Stev
 N. Y.—New-York R

- Old.—Oldright's Rep
 O. S.—Means old seri
 O. R. 3 Chy D. 320 —
 O. R. 4 C. P. D. 565.—
 O. R. 1 Q. B. D. 200.—

- Pardessus, ed. 1809.—
 " ed. 1841.—
 Parsons, 1st ed. 1867—
 Bills of Exchange, in
 P. C., 4 App. Cas. 200

M. L. R., 1 Q. B., 200.— “ 1 Queen's Bench, 200.
 M. & M. or Moo. & M.—Moody and Malkin, English.
 M. & R. or MacL. & R.—Maclean and Robinson, English.
 M. & S. or Moo. & S.—Moore and Scott's Reports, English.
 M. & W. or Mee. & W.—Meeson and Welsby, English.
 M. & W.—Meeson and Welsby's Reports, English.
 Macq.—MacQueen Appeal Cases, Scotch.
 Ma. R.—Manitoba Reports.
 Mareschal, 1625.—*Traité des Changes*.
 Marsh.—Marshall's Reports, U. S.
 Martin.—Martin's Reports, Louisiana.
 Martin N. S.—Martin, New Series, Louisiana.
 Merlin.—*Répertoire*, 1812, 1820.
 Mass.—Massachusetts Reports.
 Md.—Maryland Reports.
 Mich.—Michigan Reports.
 Minn.—Minnesota Reports.
 Miss.—Mississippi Reports.
 Mo.—Missouri Reports
 Mod.—Modern Reports, English.
 Moo. P. C.—Moore's Privy Council Cases, English.
 Moo. & S.—Moore and Scott's Reports, English.
 Mood. & M.—Moody and Malkin's Reports, English.
 Morawetz, 2nd ed. 1886.—*A Treatise on the Law of Private Corporations*, in 2 vols.

N

Namur.—*Cours de Droit Commercial*, ed. 1866, Belge.
 N. B., 4. A. or 4. A1 543.—Allen Reports. New Brunswick.
 N. B.—New Brunswick Reports.
 N. H.—New Hampshire Reports.
 Nougier, 2nd ed. 1851 (unless ed. 1875 is mentioned).—“*Des lettres de change*, etc.”
 Nougier, 4th ed. 1875.—*Lettres de change*. Sometimes reference made to ed. 1851 or 1839.
 N. S. D.—Nova Scotia Decisions.
 N. S. R.—Nova Scotia Reports.
 N. B. Stevens.—Steven's Digest, New Brunswick.
 N. Y.—New-York Reports.

O

Old.—Oldright's Reports, Nova Scotia.
 O. S.—Means old series of Upper Canada Reports.
 O. R. 3 Chy D. 320 —Ontario Rep. 3 Chancery Division, 320.
 O. R. 4 C. P. D. 565.— “ 4 Common Pleas, 565.
 O. R. 1 Q. B. D. 200.— “ 1 Queen's Bench Division, 200.

P

Pardessus, ed. 1809.—*Contrat de Change*.
 “ ed. 1841.—*Droit Commercial*, vol. 2.
 Parsons, 1st ed. 1867.—*A Treatise on the Law of Promissory Notes and Bills of Exchange*, in 2 volumes
 P. C., 4 App. Cas. 200.—Privy Council 4 Appeal Cases, 200, Engl

- Penn. St.—Pennsylvania State Reports.
 Persil, ed. 1837.—*De la Lettre de Change*.
 Pet. or Peter's Reports, U. S.
 Phillimore.—*Commentary upon International Law*, Philadelphia ed. 1854-57 and the law of domicile, London ed. 1847.
 Pothier.—*Contrat de Change*, 1763.
 P. R.—Practice Reports, Ontario.
 P. Rep.—Pyke's Reports, Quebec.
 Pugsley.—Reports, New Brunswick.
 Pugsley and Burbidge, "

Q

- 23 Q. B. D., 243.—Law Reports, Queen's Bench Division, vol. 23, page 243, English.
 Q. B. R.—Queen's Bench Reports, Quebec.
 Q. B.—Adolphus & Ellis or Queen's Bench, New Series, English.
 Q. L. D. or Q. D. or Dig.—Quebec Law Digest by Stephens.
 Q. L. R.—Quebec Law Reports.
 Quebec Civil Code.—Civil Code of Lower Canada.

R

- R. C.—*Revue Critique*, Quebec.
 R. & C.—Russell and Chesley, Nova Scotia.
 R. & G.—Russell and Geldert, "
 Ram. Dig.—Ramsay's Appeal Cases, Quebec.
 R. de L.—*Revue de Législation*, Quebec.
 R. L.—*Revue Légale*.
 R. or Ry. & M.—Ryan and Moody's Reports, English.
 Rd. Ray.—Lord Raymond's Reports, English.
 Randolph, 1st ed. 1888.—"A Treatise on the Law of Commercial Paper," in 3 vols.
 Rej.—A decision of the "Cour de Cassation," dismissing an Appeal.
 Req.—A decision of "La Chambre des Requêtes de la Cour de Cassation."
 R. I.—Rhode Island Reports.
 Rob.—Robinson's Reports, Louisiana.
 Rogue.—*Jurisprudence Consulaire*.
 Ross.—Leading Cases, 1854, vol. 2, relating to Bills of Exchange and Promissory Notes, Scotch.
 Russ & R.—Russell and Ryan's Reports, English.

S

- S. 18, 1, 124—means "Recueil Général by Sirey, year 18, part 1, page 124."
 Savary.—1675, *Parfait Négociant*.
 " —1688, *Parères*.
 Savigny.—Private International Law, 1869, Guthrie's ed.
 S. C. R.—Reports of the Supreme Court of Canada.
 Story.—Conflict of Laws, 7th ed. 1872.
 S. R.—Stuart's Reports, Quebec.
 S. V. 36, 2, 368—Means *Recueil Général*, by Villeneuve and Carrette, year 1836, part 2, p. 368.

Show.—Sirey.—Story on L
 " P

Taunt or T
 T. R.—Tex
 Tex.—Tex
 Thompson
 Thomp.—T
 Thorburn.
 Tiedeman.
 Toubeau.
 Tranchart.
 Tudor.—L

U. C. 2, C.
 " 2, Q.
 U. C. 6, L.
 " 1, L.

Ves.—Vese
 Vincens, ed
 Vt.—Verme

W. R.—We
 Wal.—Wall
 Wharton.—
 Wend.—We
 Westlake.—
 Wheaton.—
 Wheat.—W
 Wis.—Wisc

Show.—Shower's Reports, English.

Sirey.—See Gilbert surSirey.

Story on Bills of Exchange, 1843.

" Promissory Notes, 1847.

T

Taunt or Taun.—Taunton's Reports.

T. R.—Term Reports, English.

Tex.—Texas Reports.

Thompson, on Bills of Exchange.

Thomp.—Thompson's Reports, Nova Scotia.

Thorburn.—Bills of Exchange Act, Scotch.

Tiedeman.—On Commercial Paper, ed. 1889.

Toubeau.—Institutes.

Tranchart.—Petit Discours des Changes, 1659.

Tudor.—Leading Cases, ed. 1884.

U

U. C. 2, C. P. 200.—Upper Canada, 2 Common Pleas, page 200.

" 2, Q. B. 200.—Upper Canada, 2 Queen's Bench, page 200.

U. C. 6, L. J. 58.—Upper Canada 6, Law Journal, page 58.

" 1, L. J. N.S., 58.— " 1, Law Journal, New Series, page 58.

V

Ves.—Vesey sr's Reports, English.

Vincens, ed. 1821.—De la Législation Commerciale.

Vt.—Vermont Reports, U. S.

W

W. R.—Weekly Reports, English.

Wal.—Wallace's Reports, U. S.

Wharton.—Conflict of Law, 1872.

Wend.—Wendell's Reports, U. S.

Westlake.—Conflict of Laws, 8th ed., 1869.

Wheaton.—Elements of International Law, Dana's 8th ed. 1866.

Wheat.—Wheaton Reports, U. S.

Wis.—Wisconsin Reports.

THE BI

An Act relating to

HER Majesty
the Senate
as follows :—

1. This Act
Exchange Act,

2. In this
requires :—

(a) The ex
acceptance com

(b) The exp
claim and set-

(c) The exp
ated bank or
Canada ;

THE BILLS OF EXCHANGE ACT, 1890.

53 VICT., c. 33.

*An Act relating to Bills of Exchange, Cheques, and
Promissory Notes.*

[Assented to 16th May, 1890.]

HER Majesty, by and with the advice and consent of
the Senate and House of Commons of Canada, enacts
as follows :—

PART I.

PRELIMINARY.

1. This Act may be cited as "*The Bills of* Short title.
Exchange Act, 1890."

2. In this Act, unless the context otherwise Interpretation
requires :—

(a) The expression "Acceptance" means an "Acceptance."
acceptance completed by delivery or notification ;

(b) The expression "Action" includes counter- "Action."
claim and set-off ;

(c) The expression "Bank" means an incorpo- "Bank"
rated bank or savings bank carrying on business
in Canada ;

2.

“Bearer.”

(d) The expression “Bearer” means the person in possession of a bill or note which is payable to bearer ;

"B.H.;"
"N.de."

(e) The expression "Bill" means bill of exchange, and "Note" means promissory note ;

"Delivery."

(f) The expression “Delivery” means transfer of possession, actual or constructive, from one person to another ;

“holder.”

(g) The expression "Holder" means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof ;

"Indorsement."

(h) The expression “Indorsement” means an indorsement completed by delivery ;

"Is-uc."

(i) The expression “Issue” means the first delivery of a bill or note, complete in form, to a person who takes it as a holder ;

"Value."

(j) The expression "Value" means valuable consideration ;

“Defence.”

(k) The expression “Defence” includes counter-claim.

This section contains the definitions embodied in the English Act, with the exception of sub-section (c). Our banking institutions being all corporations, the definition of the word "bank" is made to correspond with the system prevailing in Canada. Beyond this change, the section is similar to that of the English Act. In the Senate, the definition contained in sub-section (k) was added to remove a doubt as to whether the expression *defence* includes "counter-claim."

Both the English and Canadian Acts have omitted many other definitions mostly to be found in Article 2281 of the Civil Code of Quebec. The person who draws the bill is the *drawer*; the person to whom it is addressed is termed the *drawee*; the person to whom payable is termed the *payee*; the person to whom it is transferred, the *indorsee*; the person who transfers it, the

§ 2.

transferrer; and if he put his name on the back of the bill, he is termed the *indorser*. After acceptance, the drawee becomes the *acceptor*. The person who is requested to accept in case of need is the *drawee au besoin*, and after acceptance becomes the *acceptor au besoin*. The person who, after protest for non-acceptance or for better security, intervenes and accepts for the honor of any party to the bill, is called the *acceptor for honor*. The person who merely guarantees the payment of the bill is called *donneur d'aval* or *guarantor*; but under section 56 of the Act, the latter is considered an indorser.

§ 3.

PART II.

BILLS OF EXCHANGE.

Form and Interpretation.

Bill of exchange defined.

3. A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay, on demand or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person, or to bearer;

When instrument is not such bill.

(2) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not, except as hereinafter provided, a bill of exchange;

Unconditional order defined.

(3) An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with (a) an indication of a particular fund out of which the drawee is to re-imburse himself, or a particular account to be debited with the amount, or (b) a statement of the transaction which gives rise to the bill, is unconditional;

Bill not invalid for reasons specified

(4) A bill is not invalid by reason:—

(a) That it is not dated;

(b) That it does not specify the value given, or that any value has been given therefor;

(c) That is drawn

See sections

An unconditional
See definition

The following

1. "Received by Stephen, 18

"Received from he returned w 315. See infr

2. "Mr. B. Ruff v. Webb,

3. A promise demand the la Leal. Cases 2

4. A bill pay Saxe v. Pom

5. A note National Bank

6. Municipality of Comp

7. "Credit Collingridge, 9

8. A certificate interest in the ex Voyer, 5 R. L.

Miller v. Auster

9. The follow "Levi Mason,

me in our sett 522.

10. A promise is addressed to

6 Barn. & C. 4

dolph 262; Lloyd exchange. Tot

May, 1828, S. V 1843, J. P. 44, 2

11. The follow "Nathan Kenne

"to J. McShane,

"all the space fi

"Line Steamers

"of one thousa

"thousand dolla

"jun., or order,

"stood that this

"above the rate

"ship owners."

—Kennedy

(c) That it does not specify the place where it § 3.
is drawn or the place where it is payable.

See sections 9, 11 and 23 of the Act.

An unconditional order in writing to pay a sum certain in money.
See definition of promissory notes in section 82.

The following have been held to be valid bills or notes :—

1. "Received from C. £30 payable on demand." *McGubbin v. Stephen*, 18 D. 1824; *Chalmers* 19. But the following receipt, "Received from Mrs. Rachel Ascher loan of eight hundred dollars, to be returned when required," is not a note. *DeSola v. Ascher*, 17 R. L. 315. See *infra*, nn. 7, 29 and 31. See notes.

2. "Mr. B. will much oblige Mr. A. by paying to the order of C." *Ruff v. Webb*, 1 Esp. 129.

3. A promise to pay in cash or goods, if the holder chooses to demand the latter. *McDonnell v. Holgate*, 2 R. de L. 29; *Bigelow*, *Lead. Cases* 20.

4. A bill payable in Paris or London, at the choice of the holder. *Saize v. Pompe*, 8 C. P. N. S. 542.

5. A note payable "in legal tender money." *North-Western National Bank v. Jarvis*, 2 Ma. R. 53.

6. Municipal debentures. *Eastern Townships Bank v. Municipality of Compton*, 7 R. L. 446. But see *Randolph* vol. 1, p. 109. § 91.

7. "Credit C. or order in cash" instead of "Pay." *Ellison v. Collingridge*, 9 C. B. 570; *Lovell v. Hill*, 6 C. & P. 238.

8. A certificate of deposit payable "15 days after notice with interest in the event of the deposit lasting three months." *Richer v. Voyer*, 5 R. L. 591; P. C. 5 App. Cas. 461; 1 *Randolph* 106, § 89; *Miller v. Austen*, 13 How. 218.

9. The following order written at the foot of a promissory note, "Levi Mason, Esq., please pay the above note and hold it against me in our settlement.—N. Leonard." *Leonard v. Mason*, 1 Wend. 522.

10. A promise to pay, in the form of a note, which, in addition, is addressed to a third person, is a promissory note. *Edis v. Bury*, 6 Barn. & C. 433; *Brazelton v. McMurry*, 44 Ala. 323; 1 *Randolph* 262; *Lloyd v. Oliver*, 18 Q. B. 471. In France, it is a bill of exchange. *Toulouse*, 22nd July 1826, S. V. 27, 2, 51; *Cass.*, 14th May, 1828, S. V. 28, 1, 272. But see *Montpellier*, 17th November, 1843, J. P. 44, 2, 319.

11. The following writing is a note :—"This is to certify that I, "Nathan Kennedy, cattle exporter, hereby agree and bind myself to pay "to J. McShane, jun., or order, the sum of two thousand dollars, for "all the space from date to close of navigation that he has on Beaver "Line Steamers, Allan Line and all other Line Steamers, the sum "of one thousand dollars I now pay in cash, and the sum of one "thousand dollars I bind and pledge myself to pay to J. McShane, "jun., or order, on or about 15th November, 1883. It is under- "stood that this amount of two thousand is paid for premium over and "above the rate of freight to be paid for said steamers to agents or "ship owners."

(Signed) N. KENNEDY.

—Kennedy & Exchange Bank of Canada, 30 L. C. J., 266.

§ 3.

12. "Due James Gray, or bearer, four hundred and eighty-two dollars, payable in fourteen days after date," the word payable amounting to a promise to pay. *Gray v. Warden*, U. C., 29 Q. B. 535.

13. "Seventeen months after date, I promise to pay to Mr. James Hogg, or order, £50 without interest, or three years and five months after date with two years interest." *Hogg v. Marsh*, U. C., 5 Q. B. 319. See *infra*, n. 52.

14. Every order in writing on a bank, where the drawer keeps an account, is a cheque, whether against funds or for advances. *Bank of Montreal v. Rankin*, 4 L. N. 362.

15. A note, payable at a specified date with interest, containing a proviso that "if the defendant should sooner dispose of or sell certain lands, mentioned and described in a memorandum on said note which the defendant then owned, then the said note should be payable on demand at said bank." *Elliott v. Beach*, 3 Ma. R. 213. See also *Deering v. Hayden*, 3 Ma. R. 219.

16. A note payable to C, or bearer, adding: "which, when paid, is to be endorsed on the mortgage, bearing even date with this note." *Chesney v. St. John*, 4 A. R. 150.

17. A bill of exchange on the Bank of England for £7,000, "which sum is on account of the dividends and interest due on the capital and deeds registered in the books of the bank... which you will please charge to my account and credit, according to a registered letter I have addressed to you." *Crofton v. Crofton*, 33 Ch. D. 612; 56 L. J. Ch. 135; 55 L. T. 391; 35 W. R. 247.

Are likewise valid the following bills payable:—

18. "As my quarterly half-pay due 1st February by advance." *McLeod v. Snee*, 2 Stra. 762.

19. Being a portion of a value as under, deposited in security for the payment hereof. *Haussoullier v. Hartsinck*, 7 T. R. 733.

20. Against cotton, per "Swallow." *Inman v. Clare*, Johns. 769.

21. On account of moneys advanced by me for the X. Company. *Griffin v. Weatherby*, L. R., 3 Q. B. 753.

22. Against credit No. 20, and place it to account, as advised per X. *Banner v. Johnston*, L. R., 5 H. L. 157.

23. Which you will please charge to my account, and credit according to a registered letter addressed to you. *Re Boyse*, 33 Ch. D. 612.

The following are invalid:—

24. A certificate by an officer of the government, certifying a balance due to another and directing a third officer to pay the amount. *McLean v. Ross*, 2 R. de L. 29. See *infra*, n. 32.

25. A promise to pay "half in cash and half in grain." *Russell v. Phillips*, 14 Q. B. 891; *Gillin v. Cutler*, 1 L. C. J. 277; *Burnham v. Watts*, 2 Kerr 377; *Melville v. Bedall*, N. B. Stev. 65.

26. "In cash or mortgage upon real estate." *Goring v. Barwick*, U. C., 16 Q. B. 45.

27. "In carpenter's or joiner's work." *Downs v. McNamara*, 3 Q. B. 276; or "in merchandise." *Pepper v. Peytavin*, 12 Martin 671.

28. A draft
Ryarson, 1 Q.
chaine v. Magi

29. "Due to
the lumber ma
5 G. S. 725.

30. A promi
Hemmingway,

31. A letter
loan, "subject
6 L. C. J. 319;

32. A writing
a certain sum
supra, n. 24.

33. A written
obligation. Cote

34. An order
Lovett, 2 N. S.

35. An order
U. C., 12 Q. B.

36. An order
\$100, "and tal
108; Austin v. L

Payable in mu

Are also inval
37. A promise
Sloan, 23

38. Or in curr
Irvine v. Lowry,

39. Or "payab
Kington v. Cross,

40. Payable "
335; Dunn v. Al

41. "In cash o
2 Rose 226.

42. Payable "w
tot to exceed one
Nash v. Gibson, 11
Fahnestock v. Pa
ton v. Stevenson,

An I. O. U. or

43. An I. O. U.
v. McLennan, U.

Israel v. Izrael, 1
Fisher v. Leslie, 1

Otherwise, if the i
pay, n. g. "Due J.
late." Gray v. A

Selwyn N. I. 401

of the American S
Cridford v. Bulm

L. C. J. 307; Hall
D. 86, 2, 230. Big

§ 3.

28. A draft payable "three days after sailing of a vessel." *Dooley v. Ryerson*, 1 Q. L. R. 219; *Wood v. Higginbotham*, 2 R. de L. 28; *Duchaine v. Maguire*, 8 Q. L. R. 295.

29. "Due to Mr. Robert Russell £500. etc., payable at the sale of the lumber marked P. A., in Quebec or elsewhere." *Russell v. Wells*, 5 G. S. 725.

30. A promise to pay "when K. shall arrive at age." *Kelley v. Hemmingway*, 13 Ill. 604. See section 11 (b).

31. A letter acknowledging the receipt of a sum of money as a loan, "subject to be returned when demanded." *Whishaw v. Gilmour*, 6 L. C. J. 319; 13 L. C. R. 94. *Supra*, n. 1. See notes.

32. A writing certifying that a person is indebted unto another in a certain sum of money. *Dasylya v. Dufour*, 16 L. C. R. 294. See *supra*, n. 24.

33. A written promise containing a condition to pass a notarial obligation. *Côté v. Lemieux*, 9 L. C. R. 221.

34. An order drawn for amount of freight to be earned. *Brett v. Lovett*, 2 N. S. D. 472.

35. An order not directed to any person. *Forward v. Thompson*, U. C., 12 Q. B. 103. See *supra* No. 9, 10 and sect. 6, n. 1.

36. An order to pay plaintiff, or bearer, ninety days after date, \$400, "and take up their note, etc." *Cook v. Satterlee*, 6 Cowen 405; *Austin v. Burns*, 16 Barb 643.

Payable in money.

Are also invalid:—See sect. 9, n. 1 to 4.

37. A promise to pay in New York "in Canada money." *Thompson v. Sloan*, 23 Wend. 71. See section 9.

38. Or in current bank notes. *Little v. Phoenix Bank*, 7 Hill 359; *Irvine v. Lowry*, 14 Peters 293; *Collins v. Lincoln*, 11 Vt. 268.

39. Or "payable in money or in the bonds of a corporation." *Burlington v. Cross*, 15 Han. 74.

40. Payable "in Canada bills." *Gray v. Warden*, U. C., 29 Q. B. 535; *Dunn v. Allen*, 24 N. B. 1.

41. "In cash or notes of the Bank of England." *Ex parte Imeson*, 2 Rose 226.

42. Payable "with exchange on New York," or "with exchange not to exceed one-half per cent." *Cazet v. Kirk*, N. B., 4 A. 513; *Nash v. Gibson*, *ibid.* 479; *Palmer v. Fahnestock*, U. C., 9 C. P. 172; *Fahnestock v. Palmer*, U. C., 20 Q. B. 307; U. C., 23 Q. B. 387; *Saxton v. Stevenson*, U. C., 23 C. P. 503.

An I. O. U. or Bon.

43. An I. O. U., or a "Bon," or "Good to," or "Due to." *Palmer v. McLennan*, U. C., 22 C. P. 258, 570, affirmed in appeal, *id.* 565; *Leach v. Izrael*, 1 Campb. 499; *Tomkins v. Ashby*, 6 B. & C. 541; *Fisher v. Leslie*, 1 Esp. 125; *Fesenmeyer v. Adcock*, 16 M. & W. 449. Otherwise, if the instrument contains words expressing a promise to pay, *v. g.* "Due J. G., or bearer, \$482, payable in fourteen days after date." *Gray v. Warden*, U. C., 29 Q. B. 535; *Casbourne v. Dutton*, Selwyn N. L. 401; 1 Randolph 107. In Quebec, France, and in most of the American States, an I. O. U., a bon, etc., is held to be valid note. *Cridford v. Bulmer*, M. L. R., 4 Q. B. 293; *Beaudry v. Laflamme*, 6 L. C. J. 307; *Hall v. Bradbury*, 1 R. de L. 180; *Pau*, 6th April, 1886, D. 86, 2, 230. *Bigelow*, *Lead. Cases*, 2nd ed. 22. See notes.

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54. A memorandum, made by the drawer of an order in the form of a bill of exchange, that he can renew it at maturity, invalidates the bill. *Paris*, 2nd Feb., 1830, S. 30, 2, 175. But it was held in Louisiana that the memorandum made by the maker, that he "reserves to himself the right to postpone payment for five years," does not invalidate the note. *Bacchus v. Moreau*, 4 An. 313.

A letter of credit :—

55. A letter, in which a banker requests another banking house to place a certain sum of money to the credit of the bearer on a given day, is not a bill of exchange, but a letter of credit which may be cancelled at any time before maturity. *Cass.*, 14th June, 1880, S. 80, 1, 309; *Story*, Bills of Exchange, §§ 459 *et seq.*; *Union Bank of Canada v. Cole*, 47 L. J. C. P. 109; *Morgan v. Larivière*, L. R., 7 H. L. 432; *British Linen Co. v. Caledonian Ins. Co.*, 4 Marq. 9 H. L. 109. See *infra*, sect. 17, n. 17.

Out of a particular fund.

The following have also been held invalid as being payable out of a particular fund :—

56. "Mr. Ockerman, Mr. Blacklock wants \$25 at 12 o'clock this day, 15th February, 1860. I want you to get it him immediately out of Scovill's money." *Ockerman v. Blacklock*, U. C., 12 C. P. 362.

57. "Out of the first moneys received by you on my account." *Fullerton v. Chapman*, 2 N. S. D. 470.

58. Out of the moneys in your hands belonging to the X. Company. *Jenney v. Herle*, 2 Ld. Raym. 1361.

59. Out of the money due from X. as soon as you receive it. *Dawkes v. Lord Deloraine*, 3 Wils. 287; 2 W. Bl. 782.

60. Out of the money arising from my reversion when sold. *Carlos v. Fancourt*, 5 T. R. 482, Ex. Ch.

61. On the sale of produce when sold of the X. Hotel. *Hill v. Halford*, 2 B. & P. 473, Ex. Ch.

62. Out of the moneys now due, or hereafter to become due, to me under the will of my late father, and before making any payment to me thereout. *Fisher v. Calvert*, 27 W. R. 301, M. R.

63. Out of the net proceeds of ore to be raised and sold from a certain ore bed. *Worden v. Dodge*, 4 Denio 159; *Morton v. Naylor*, 1 Hill 583; *Gallery v. Prindle*, 14 Barb. 186.

64. "And deduct the same from my share of the profits of the partnership." *Munger v. Shannon*, 61 N. Y. 251, where all the English and American authorities are collected and reviewed.

(a) *That it is not dated.* See section 20 as to filling blank for date.

65. If a bill be not dated, it will be considered as dated at the time it was made and delivered. *De la Courtier v. Bellamy*, 2 Show 122; *Hague v. French*, 3 B. & P. 173; *Giles v. Bown*, 6 M. & S. 73; *Michigan Ins. Co. v. Leavenworth*, 30 Vt. 11. *Nîmes*, 5th July, 1819, 1 Bédarride, 82.

66. A false date, or a date earlier than the delivery, does not invalidate the paper in any manner. *Gray v. Wood*, 2 Har. & T. 328; *Richter v. Selin*, 8 Serg. & R. 425. See section 63.

(b) *That it does not specify the value.* See section 30.

67. The words "for value received" are not essential to a bill or

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note. *Arrêt* of the 16th May, 1664, 2 Journ. des Audiences 287; 29th July, 1706; 1 Biret, des Nullités, 326, 22nd August, 1741; 10th April, 1764; *ibid.*, pp. 327, 338, 339; Duchesnay v. Evarts, 2 R. de L. 31, n. 39; Larocque v. Franklin County Bank, 8 L. C. R. 328; Stevens v. Lyman, Hart v. Macpherson, both cited in Girouard, Lettres de Change, p. 66; Dufresne v. St. Louis, M. L. R., 4 S. C. 310. Cass. 1st April, 1811, 2 Bédarride, 402. See sect. 30 and notes.

(c) *That it does not specify the place.*

68. A bill may state an alternate place of payment, at holder's option. *Saze v. Pompe*, 8 C. P. N. S. 542; *Beecher v. Gower*, Holt, N. P. C. 313; *Pollard v. Herries*, 3 B. & P. 335.

69. It is no longer essential that a bill of exchange be payable in a town or place different to that in which it is drawn. *Freer v. Bréhaut*, 1843, Girouard, Lettres de Change, p. 43. See notes.

Requisites
for bills.

Under the Act, no special form of words is essential to the validity of a bill. The definition of a bill of exchange, given in section 3, seems to be defective, because it is said to be an order addressed by one person to another to pay to the order of a specified person or to bearer, a sum certain in money on demand or at a certain future time. From the wording of this definition, it would seem that three persons are essential to the validity of a bill, whereas, under section 5, the drawer and the drawee, the drawer and the payee, the drawee or the payee, may be the same person. "There must be," says Chalmers, "in point of form, three parties to a bill of exchange: (1) the party who gives the order, called the drawer; (2) the party on whom the order is given, called the drawee; (3) the party in whose favor the order is given, called the payee." Thereupon Lord Esher remarks: "I agree to this, except to the phrase *in point of form*. I think that there must be three real parties, although the same party may be the drawer and the payee." *Vagliano v. Bank of England*, 23 Q. B. D. 243; L. J. Q. B. 357. Section 5, sub-section (2), says that where the drawer and drawee are the same person, the holder may treat the instrument either as a bill of exchange or a promissory note. Where the bill is drawn payable to the order of the drawer or to the order of the drawee, it was generally considered, before the Act, not to be a bill of exchange until completed in the two capacities. See *infra* section 5. Under section 5, it will be better to treat the instrument as a bill of exchange; but it is clear that the instrument payable to the order of the drawee is not a bill which can be enforced until the drawee has indorsed it away.

Under section 3, the order of a bill of exchange must be to the order of a specified person or to bearer, a sum certain in money on demand or at a certain future time.

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Under section 3, a bill of exchange is supposed to be payable § 3.
to the order of a specified person or to bearer; but under section
8, sub-section 1, a bill though not negotiable is valid; and under
sub-section 4, a bill payable to a particular person, without the
words *or order, or bearer*, is still negotiable.

Under section 3, a bill is to be made payable on demand, or at
a certain future time; but under section 10, it is not necessary to
express any time for payment, and then the bill is payable on de-
mand.

It is not therefore surprising to notice in sub-section 2 of sec-
tion 3, the proviso that "an instrument which does not com-
ply with these conditions is not, *except as hereinafter provided*,
a bill of exchange."

The definition of a bill of exchange, given in the Civil Code
of Quebec, seems to be more in accordance with the provisions
of the Act and the principles of the Law Merchant as under-
stood in England. Art. 2279 says: "A bill of exchange is a
written order by one person to another for the payment of money
absolutely and at all events."

It may be said that the definition of a bill of exchange, as
given in section 3, is in the usual form, but it exceeds the
requirements of the Act.

A bill in the following form is a bill strictly within the mean-
ing of the Act:—

MONTREAL, 1st September, 1890.

"Pay to myself, one hundred dollars.	Peter Brown.	
To Peter Brown, Esq.,		HENRY JONES.
15 St. James Street, Montreal.		

This instrument, which may be called a draft, or order, or a
cheque, if the drawee be a bank, is a bill of exchange within
the meaning of the Act. It is moreover negotiable. See *infra*,
section 8.

The words *for value received* are no longer necessary, and in For value
perfectly useless, even from the point of view of procedure, received.
it being no longer a *material* part of the instrument, the defen-

§ 3.

dant cannot be called upon to deny it by an affidavit, as required by the Code of Procedure of the Province of Quebec. The words *for value received* are of so little consequence, that Macleod, in his Treatise on Banking, p. 108, declares their meaning to be no greater than such words as "Your obedient servant etc.," written at the foot of the bill.

Foreign bills.

Bills drawn upon New York, and issued by our charter banks, assume generally the form of cheques upon the bank correspondents.

Bills upon London and Europe generally are drawn in a form composed of three parts. See section 70. The following is the form now in use:—

No. 200. Exchange for £100 stg.

Montreal, 3rd October, 1890.

Ninety days after sight of this first of Exchange (second and third of same tenor and date unpaid), pay to the order of John Smith, one hundred pounds sterling, value received, and charge the same with or without further advice to account of

To Henry Jones,
119 Chancery Lane,
London, Eng.

John Peters.

A bill of exchange is an unconditional order, and a promissory note an unconditional promise to pay. Sections 3 and 82. The essential character of both these instruments is therefore the same, and hence it is not surprising that the rules of the one apply to the other. Section 88 says that the provisions of the Act relating to bills of exchange shall apply, with the necessary modifications, to promissory notes. The maker is generally deemed to correspond with the acceptor, for a note is not susceptible of an acceptance. Consequently the provisions relating to acceptance, presentment for acceptance, and acceptance *supra protest*, do not apply to notes, and there lies the chief distinction between a bill and a note—the one is an order and the other a promise to pay. In general, any expression of a promise or order to pay will be sufficient, but a mere acknowledgment of a debt is not a note, and an aut-

ority to pay is not running, "Please me," was invalid where the order was to pay." Hamilton.

It would seem that a note within the meaning of the Act implies a promise on demand." See section 82.

It must be observed in no. 43, with reference to bills which were rendered by promissory note: "at all events, and

In Hall v. Braithwaite, the order, etc."

composed of Reid v. Reid; but in C. J. v. Pane and

In Cridford v. Bon: "Good order

four thousand five hundred per annum." The question

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erity to pay is not a bill. So it has been held that an instrument running, "Please let bearer have £100, and you will much oblige me," was invalid. *Little v. Slackford*, 1 M. & M. 171. Likewise where the document reads as follows: "We authorize you to pay." *Hamilton v. Spottiswoode*, 4 Exch. 200.

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It would seem that an I. O. U. or a bon is not a promissory I. O. U. note within the meaning of the Statute, unless it contains words implying a promise to pay, *v. g.*:—"I. O. U. \$100 payable on demand." See *supra* n. 43; 1 Randolph, § 90.

It must be observed that the Quebec decisions mentioned above in no. 43, with the exception of that of *Cridiford v. Bulmer*, were rendered before the Code, which, like the Act, defines a promissory note: "A written promise for the payment of money at all events, and without any condition."

In *Hall v. Bradbury*, the following bon: "Good on demand to the order, etc.," was held not a valid note by the Court below, composed of Reid, C. J., and Pike and Rolland, JJ., Gale, J., dissenting; but in appeal this judgment was reversed by Bowen, C. J., Pane and Bédard, JJ., Gairdner, J., diss.

In *Cridiford v. Bulmer*, the action was upon the following bon: "Good on demand to Thos. C. Bulmer for the sum of four thousand five hundred dollars, with interest at 6 per centum per annum." This document had been indorsed to the plaintiff, and the question raised between the parties was, whether value had been given for the note. Its validity as a negotiable paper was not even alluded to, and counsel and judges alike in the Court below as well as in the Court of Appeals, treated the instrument as a note. This decision, therefore, can hardly be regarded as an authority upon the point.

The same reasoning is applicable to receipts for money containing a promise of repayment. Thus the following document: "Received of A. B. £100, which I promise to pay on demand," has been held to be a good note. *Ashby v. Ashby*, 3 Moo. & P. 186; *Green v. Davies*, 4 B. & C. 235. Likewise a receipt for money, "to be returned when called for." *Woodfolk v. Leslie*, 2 Natt. & McC. 585, 1 Randolph § 90. But a mere statement of receipt intended for evidence of moneys to be accounted for is not a note, inasmuch as it does not contain any words implying a promise to pay. *Tomkins v. Ashby*, 6 B. & C. 541; *Roman v. Terna*, 40 Tex. 306.

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The Court of Appeals of the Province of Quebec has recently decided that the following receipt was not a note: "Received from Mrs. Rachel Ascher, loan of eight hundred dollars, to be returned when required." *DeSola v. Ascher*, supra, n. 1. A similar decision was rendered before the Code by Mr. Justice Monk in the case of *Whishaw v. Gilmour*, supra, n. 31, where the receipt was in the form of a letter, with the words "being for a loan, subject to being returned when demanded." The ground taken by Mr. Justice Monk was that the instrument, although signed by a trader, was payable to a non-trader, and appeared to him to partake more of the character of a civil loan than of a promissory note. The learned judge added, however, that he arrived at that conclusion "with considerable hesitation."

The report in *DeSola v. Ascher* is so meagre that it is impossible to make out upon what grounds the judges in appeal based their decision; it merely states the naked fact that the judgment of the court below was confirmed. The text, however, of the latter is fully set forth in the report, and shows that the plea of prescription applicable to promissory notes was dismissed, "*vu que la dette dont il s'agit est d'une nature civile.*" But it is not essential to the validity of a note that it should be made between traders or for a commercial consideration. The distinction between traders and non-traders, which is to be found in several of the Codes of Europe, has long ago ceased to exist in Quebec. It is not reproduced in the Code; but even if it had been, it is entirely removed by section 22 of the Act: "Capacity to incur liability as a party to a bill is co-extensive with capacity to contract." Chalmers, p. 55.

Exchange.

By section 3, a bill must be drawn for a sum certain in money. The courts of several of the provinces have held that bills made and payable in Canada, "with exchange on New York" or "on Boston," are invalid, the amount being rendered uncertain by the uncertainty of exchange. *Supra*, n. 42. The term "exchange" is used to designate the market value of money in one country to be delivered in another, and exchange changes daily, *change et vent changent souvent* is an old maxim. Speaking of a note made and payable in Kingston, Ont., "with exchange on New York," Chief Justice Draper said in *Palmer v. Farnestock*, U. C., 9 C. P. 174: "I rather read the note as

a promise to pay as will be equivalent to the true receipt in amount, for I am certain six months on a given day in 76, provides a mode in case of bills or but that applies only I apprehend, on this decision will commercial men writing notes of hand nouncing it, could be maintained the American decision had arisen the like the present case of a promissory note. This doctrine is work on the law of and *con* are to be rate of exchange but a demand for money by any one desiring. The practical effect of current exchange or definitiveness of the bill and payable in another or drawee must pay and therefore he pays the expense of securing the drawee, and the in the former case the expense of transferring to actually making that whatever uncertainty in such a bill or note rights of the parties

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a promise to pay in Kingston, Ont., such a sum of money as will be equivalent to £72 17s. in New York; and if this be the true reading, the instrument ceases to have certainty in amount, for I know no rule by which it can be said with certainty six months beforehand what will be the rate of exchange on a given day in New York. The 3rd sec. of the 12 Vic., ch. 76, provides a mode for the ascertaining of the rate of exchange in case of bills or notes protested and *returned* for non-payment; but that applies only after dishonor, and the rate is to be fixed. I apprehend, on the return of the bill or note.....I am afraid this decision will give rise to trouble and disappointment among commercial men who have adopted the system of giving and taking notes of hand in this form, and I have therefore, before pronouncing it, considered attentively whether a contrary conclusion could be maintained on the authorities. I have searched among the American decisions, as I thought not improbable a similar case had arisen there. I have found only one, but it is precisely like the present case, and the Court there held it was not a negotiable promissory note."

This doctrine is severely criticised by Tiedeman, in his recent work on the law of Commercial Paper, where all the decisions *pro* and *con* are to be found collected. At 28*a*, he says: "The rate of exchange between two places is determined by the relative demand for money in those places, and it can be ascertained by any one desiring to know, by inquiring in banking circles. The practical effect of a bill or note, payable in one place with current exchange on another place, is the same at least as to the definitiveness of the sum, as a note or bill drawn in one place and payable in another place. For, in the latter case, the maker or drawee must pay the full sum mentioned in the latter place, and therefore he pays the current exchange. In both cases, the expense of securing money in the latter place falls on the maker or drawee, and the only difference between the two cases is that in the former case the maker or drawee is only obliged to pay the expense of transferring it to another place, instead of having to actually make payment in the latter place. It would seem that whatever uncertainty as to the amount to be paid did exist in such a bill or note, it would not be sufficient to affect the rights of the parties to any material degree."

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The English jurisprudence seems to support this view, and at page 23, Chalmers quotes with approbation a case where a bill, "payable in Paris or London, at the choice of the holder, according to the course of exchange upon Paris," was declared valid. *Pollard v. Herries*, 3 B. & P. 335. See also 1 Randolph, § 200.

The Act has settled the point in favor of the validity of the instrument. Section 9 says that "the sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid (*d*) according to an indicated rate of exchange, or according to a rate of exchange to be ascertained as directed by the bill."

Where a bill is drawn out of, but payable in Canada, and the sum payable is not expressed in the currency of Canada, section 71, sub-section (*d*), declares that "the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable."

If a bill be dishonored abroad re-exchange is also due. See section 57.

These provisions apply to notes as well as to bills. Sect. 88.

Under the French Code and other European Codes, a bill of exchange must be payable in a place different to that in which it is made, or that what is termed *la remise de place en place* be strictly observed. Such was undoubtedly the old law of France, which prevailed for a long time in the Province of Quebec. The law of England is different, and in all countries governed by that law, a bill drawn and payable in the same place is valid. From time immemorial before the promulgation of the Quebec Code, our merchants had adopted and followed the English custom, which was sanctioned by the Civil Code, *la remise de place en place* not being mentioned as an essential to a bill of exchange. C. C., Art. 2289. The only practical distinction between a bill payable at the place where drawn and a bill payable at another is, that the bank discounting it may charge, in addition to the usual discount, an extra commission specified in sections 82 and 83 of the Bank Act.

A bill may be drawn in any language. In New Zealand, where the English Act was adopted in 1883, section 96 provides that a bill signed by an aboriginal native, not in his own lan-

"Remise de place en place."

Language.

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language called "Moori," is null and void as against him, unless there be thereon a translation of the instrument in that language, and duly interpreted.

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Special provisions respecting notes intended to circulate as Bank notes, money, or to be used as a substitute for money, will be found in the new Banking Act passed during the last session of the Parliament of Canada, to come into force on the 1st July, 1891, 53 Vict., c. 31. Such note issued by any person except a chartered bank is not however declared invalid, but the person issuing the same incurs a penalty of four hundred dollars. Sect. 60, par. 1.

The intention to pass any instrument as money shall be presumed, if it is made for the payment of a sum less than twenty dollars, and is payable to bearer, at sight or on demand, or at less than thirty days. However, a cheque on a chartered bank, or a note, or bill, may be delivered by the maker to his immediate creditor, provided it is not designed to circulate as money or as a substitute for money. Section 60, par. 2.

A chartered bank may issue notes payable to bearer on demand and intended for circulation; but such notes shall not be for a sum less than five dollars, or for any sum which is not a multiple of five dollars, and the total amount of such notes in circulation at any time shall not exceed the amount of the unimpaired paid up capital of the bank. Section 51. The total amount of bank notes in circulation at the present time is \$32,718,363.

A bank shall not pledge, assign, or hypothecate its notes; and no advance or loan made on the security of the notes of a bank shall be recoverable from the bank or its assets. Section 52.

The payment of bank notes in circulation constitutes the first charge upon the assets of the bank in case of its insolvency. Section 53.

Section 55 says:—"The bank shall make such arrangements as are necessary to ensure the circulation at par, in any and every part of Canada, of all notes issued or re-issued by it and intended for circulation; and towards this purpose the bank shall establish agencies for the redemption and payment of its notes at the cities of Halifax, St. John, Charlottetown, Montreal, Toronto, Winnipeg and Victoria, and at such other places as are, from time to time, designated by the Treasury Board."

Section 57:—"The bank, when making any payment, shall,

either as a bill of exchange or as a promissory note. § 6.

See section 8.

1. When the same person represents two parties to a bill, *v. g.*, as drawer and drawee, drawee and payee, or drawer and payee, the instrument is not a bill of exchange until it is signed and delivered in the two capacities. *Holdsworth v. Hunter*, 10 B. & C. 449; *Witte v. Williams*, 28 Am. R. 294; *R. v. Bartlett*, 2 M. & R. 362; 1 Randolph 231; *Emm v. Hastings*, N.B. 4 A. 482; *Cass*, 1st May, 1809, S. 1809, 175; *Nimes*, 23rd June, 1829; *Toulouse*, 3rd December, 1829, cited in *Bedarride*, vol. I, p. 101. See notes under section 3.

2. A firm carries on business in London and Liverpool. The London house draw a bill on the Liverpool house. The holder may treat it as a note made by the London house payable in Liverpool; and if it be not paid, the omission to give notice of dishonor to the London house is immaterial. *Miller v. Thomson*, 3 M. & Gr. 576; *Fairchild v. Ogdensburg Railway Co.*, 15 N.Y. 337; *Willans v. Ayers*, R.C., 3 App. Cas. 133; *Rouen*, 20th August, 1845, J. P. 1846, p. 449.

3. A. draws a bill on B. and negotiates it away; B. is a fictitious person. The holder may treat the bill as a note made by A. He need not prove presentment or give notice of dishonor. *Smith v. Bellamy*, Stark. 223.

4. The directors of a joint stock company draw a bill in the name of the company, addressed "To the Cashier." The holder may treat it as a note by the company. *Allen v. Sea, Fire and Life Assurance Co.*, 9 C.B. 574.

5. Bills drawn by an agent or officer of a corporation on another officer, or on the corporation itself, may be treated, at the option of the holder, as bills or notes. *Taylor v. Newman*, 77 Mo. 257; 1 Randolph, 21.

6. The drawee must be named or otherwise indicated in a bill with reasonable certainty; Drawee to be named.

(2) A bill may be addressed to two or more drawees, whether they are partners or not; but in order addressed to two drawees in the alternative, or to two or more drawees in succession, is not a bill of exchange. If there are more than one.

See sections 3, 5 and 34.

1. Instrument in the form of a bill, but addressed to no one. B. gives an acceptance thereon. This is not a bill, and B. is not liable as acceptor. He is perhaps liable as the maker of a note. *Peto v. Exchels*, 9 Exch. 410, and 11 Exch. 418, Ex. Ch.; *Shuttleworth v. Stephens*, 1 Campb. 407; *Allan v. Mawson*, 4 ibid. 115; *R. v. Hunter*, R.C. & R.C.C. 51. See *supra* section 3, nn. 9, 10, and 35. *Infra*, 2.

§ 7.

2. Instrument in the form of a bill payable to drawer's order, not containing the name of a drawee, but expressed to be payable "at No. 1 Union Street, London." B., who lives there, accepts it. This is a bill, and B. is liable as acceptor. *Ibid.*; *Edis v. Bury*, 6 B. & C. 433. See *supra*, n. 1.

3. Instrument in the form of a bill. Where the address to the drawee should be, are the words "at Messrs. B. & Co." This is a bill addressed to B. & Co. *Gray v. Milner*, 8 Taunt. 739.

4. A bill addressed to "Steamer Dorrance and owners" held sufficient. *Alabama Coal Mining Co. v. Brainard*, 35 Ala., 476.

5. An acceptance by a firm in its right name of a bill drawn on it in a wrong name is good. *Lloyd v. Ashby*, 2 B. & A. 23.

6. A bill directed to A., "or in his absence to B.," and accepted by A., is valid. 1 Randolph 262. Otherwise under section 6, subsection 2 of the Act.

Certainty required as to payee.

If payable to two or more payees, or to holder of office.

If payee is non-existing.

7. Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty;

(2) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being;

(3) Where the payee is a fictitious or non-existing person, the bill may be treated as payable to bearer.

See section 20.

1. The fact that a note is payable to a fictitious person does not render it negotiable any more than if the payee were a real person. *Williams v. Noxon*, U.C., 10 Q. B. 259. By section 7, sub. 3, it is payable to bearer.

2. Held, that by "fictitious" is meant "fictitious to the knowledge of the party sought to be charged upon a bill." *Vagliano v. Bank of England*, 23 Q. B.D. 243; 58 L. J. Q. B. 357.

3. A promissory note made to C. and D. jointly was indorsed by C. alone to B. and by B. to A. Held, that B. was liable as indorser, and could not set up as a defence to an action by A. that D. had not joined in the indorsement. *Thurgar v. Clarke*, 2 Kerr 370.

Semble.—That A. could not have maintained an action against the maker of the note without proving that C. had authority to indorse.

4. A promise payable "to Elias S. Reed or John Fraser, his guardian," was held not to be a note. *Reed v. Reed*, U. C., 11 Q. B. 26; see also *Blankenhagen v. Blundell*, 2 B. & Ald. 417; *Holmes v. Jacques*, 1

R. 1 Q. B. 376; W.

See section 7, sub-

5. A bill payable

is void for uncertain

Nash, 29 L. J.

6. Extrinsic evi-

disnamed, or when

Q. B. 24, Ex. Ch.

Barrett, 2 Stark

7. Thus, a note

"J. S. & Co.,"

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189; 9 Ca. S.C.R. 2

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Belarride, p. 178

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§ 7.

1 Q. B. 376; *Watson v. Evans*, 32 L. J. Ex. 137; 1 Randolph 235. See section 7, sub-sect. 2.

5. A bill payable to the "treasurer for the time being" of a society void for uncertainty. *Cowie v. Sterling*, 6 E. & B. 333, Ex. Ch.; *Yates v. Nash*, 29 L. J. C. P. 306. Otherwise by section 7, sub-sect. 2.

6. Extrinsic evidence is admissible to identify the payee when misnamed, or when described by description only. *Soares v. Glyn*, 1 Q. B. 24, Ex. Ch.; *Holmes v. Jacques*, L. R., 1 Q. B. 376; *Willis v. Barrett*, 2 Stark 29; *Jacobs v. Benson*, 39 Maine 132. Sect. 32.

7. Thus, a note made payable by mistake to "J.S. & Son," instead of "J. S. & Co.," may be sued upon by J. S. & Co., there being evidence that they were the payees. *Souther v. Wallace*, 20 N.S.R. 50; 9 Ca. S.C.R. 210; 12 L. N. 116.

In order to give a fictitious credit, resort has been had to the use of fictitious parties, especially as payees or indorsers. Of

course it is a fraud upon the public, which the laws of some countries punish severely. In France, *la supposition de nom* may be a crime under certain circumstances, but it does not invalidate the bill in the hands of the *tiers porteur de bonne foi*. 1 Bédarride, p. 178, n. 128. In England, the insertion of a fictitious payee was also considered in the nature of a fraud, but the later cases show a disposition to recognize these instruments as far as possible. All the authorities will be found collected in *Minet v. Gibson*, decided in 1791 by the House of Lords, 1 H. Bl. 369; and also in *Vagliano v. Bank of England*, 58 L. J. Q. B. 357 1889. The extent of this fraudulent practice may be realised, when it is considered that in a single instance in England, bills bearing fictitious names had been negotiated to the amount of nearly one million sterling a year. By sections 5 and 7 of the Act, fictitious persons may be used without affecting the validity of the instrument in the hands of a holder in due course; their presence in a bill would have no other consequences, as far as he is concerned, than to dispense with protest and notice of dishonor in certain cases mentioned in sections 41, 46 and 50. A bill payable to a fictitious or non-existing person may be treated as payable to bearer. Section 7, sub-sect. 3. This sub-section, according to Chalmers, p. 19, was added in committee and is perhaps new law.

The signature of a real person using a fictitious name must be distinguished from the signature of a fictitious person, and also from the forged signature of a real person. There is no legal objection in the way of any one assuming a name, *v. g.* John

§ 8. Smith may trade under the name of "The Montreal Manufacturing Company," and sign a bill in the assumed name. Section 23 (a).

Certain bills
valid but not
negotiable.

8. When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but it is not negotiable;

Payable to
order or
bearer.

(2) A negotiable bill may be payable either to order or to bearer;

To bearer.

(3) A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank;

To order.

(4) A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable;

Option of
payee.

(5) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order, at his option.

See sections 35 and 36.

1. Where a bill is payable to bearer or indorsed in blank, its negotiability to bearer is not affected by a subsequent special indorsement. *The Exchange Bank v. the Quebec Bank*, M. L. R., 6 S. C. 10; *Walker v. Macdonald*, 2 Exch. 527; *Smith v. Clarke*, Peake 225; *Chalmers* 21. Changed by section 8, sub-sec. (3); sect. 35.

2. Before the Act, the words "or order," "or bearer," or their equivalent, were essential to negotiability. *Corporation of the Township of Toronto v. McBride*, U.C., 29 Q.B. 13; *Raymond v. Middleton*, 29 Penn. St. 529; *Whyte v. Heylman*, 34 id. 143; *United States v. White*, 2 Hill 59; *Plimley v. Westley*, 2 Bing. N.C. 251.

Sum payable.

9. The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid:—

(a) With

(b) By st

(c) By s

that upon d
the whole s

(d) Accor

change or a
ascertained

(2) When

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(3) When

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See section 3, m

The sum payable

1. A bill payab

Green v. R.R. Co., 1

P. 352; *Souther*

S. C. R. 598; *Pea*

R., 1 C. P. 34

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2. Payable "in

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Wallace v. Souther

3. Where bank

3d or silver, an

January, 1873, D.

Larselles, 7th Nov

3; *Ref.* 26 germ.

34, n. 9; see cont

4. When a bill

es due mat

5; *Hirschmidt v.*

S. C. R. 272, and

The following i

§ 9.

(a) With interest;
 (b) By stated instalments;
 (c) By stated instalments, with a provision that upon default of payment of any instalment the whole shall become due;

(d) According to an indicated rate of exchange, or according to a rate of exchange to be ascertained as directed by the bill;

(2) When the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable;

(3) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated, from the issue thereof.

See section 3, nn. 37 to 42. See also notes under section 3, p. 14.

The sum payable, with interest, by instalments, etc.

1. A bill payable in "U. S. currency" is valid. *Saint Stephen v. R.R. v. Black*, 2 Han. 139; *Greenwood v. Foley*, U. C., 22 P. 552; *Souther v. Wallace*, 2 R. and C. 518; 1 C. L. T. 566; 2 C. S. C. R. 598; *Pollard v. Harris*, 3 B. & P. 235; *Heschfield v. Smith*, 1 R. 1 C. P. 340. Thus *Bettis v. Wells*, U. C., 36 Q. B. 23, was upheld.

2. Payable "in currency" means "legal currency" and coin and bank notes current at the time of the issue or maturity of the bill are not sufficient. *Fry v. Dudley*, 20 An. 468. "Currency," when used in a bill payable in the United States, means U. S. currency. *Wallace v. Souther*, 16 Cn. S. C. R. 717.

3. Where bank notes are, by law, legal tenders, a bill payable in gold or silver, and not otherwise, cannot be enforced. *Cass*, 11th Nov. 1873, D. 73, 1, 177; *Aix*, 23rd November, 1871, D. 72, 2, 51; *Amiens*, 7th November, 1871, D. 71, 5, 128; *Jump v. Pellet*, 18 An. 13 R. j. 26 germ. An. 13, S. 7, 2, 1061; *Gilbert v. Sney*, C. C. Art. 1, n. 9; see contra, *McGeon v. Shark*, 54 Ill. 408.

4. When a bill is payable in foreign currency, its value on the day it is due must govern. *Rompette v. Overman*, 1 R. 10 Q. B. 2; *Heschfield v. Smith*, 1 R. 1 C. P. 353; see also *Da Costa v. Cole*, 1 R. 1 C. P. 272, and section 57, subsec. (b), and sect. 71, sub (d).

The following instruments are invalid, as not being for sums

§ 9.

5. An order to pay C. "£100, and all other sums which may be due to him." *Smith v. Nightingale*, 2 Stark. 275.

6. Or an order to pay C. "the proceeds of a shipment of goods value £2,000, consigned by me to you." *Jones v. Simpson*, 2 B. & C. 318.

7. Or an order to pay C. "the balance due to me for building the Baptist College Chapel." *Crowfoot v. Gurney*, 9 Bing. 372.

8. Or a promise to pay C. "£100 and the demands of the Sick Club." *Bolton v. Dugdale*, 4 B. & Ad. 619.

9. Or "£100, and all fines according to rule." *Ayrey v. Fearnside*, 4 M. & W. 168.

10. Bill for £100 payable by "instalments," not specifying dates or amounts. *Moffatt v. Edwards*, C. & M. 374.

11. Bill for £100 payable "by ten equal instalments payable, etc., all instalments to cease on the death of X." *Worley v. Harrison*, 3 A. & E. 669.

The following are valid:—

12. Bill for £100, payable "with lawful interest." *Warrington v. Early* 23 L. J. Q. B. 47.

13. Bill for £100, payable by two equal instalments due 1st January and 1st July. *Carlton v. Keneally*, 12 M. & W. 139.

14. Bill for £100, or 1,000 francs, payable at "exchange as per last indorsement." *Chalmers*, 23.

15. Bill for £100, "payable in Paris or London, at the choice of the holder, according to the course of exchange upon Paris." *Hirschfield v. Smith*, L. R., 1 C. P. 340.

16. A note payable by instalments is yet negotiable. Days of grace are allowed on each instalment. *Orridge v. Sherborne*, 11 M. & W. 374; *Carlton v. Keneally*, 12 *ibid.* 139; *Gaskin v. Davis*, 2 Fand F. 294.

17. A bill is drawn, "Pay to the order of C. two hundred pounds." In the margin is superscribed £250. This is a bill for £200 only. *Saunderson v. Pipers*, 5 Bing. N. C. 425.

18. Bill on sufficient stamp for "one hundred pounds," with £10 in the margin. The sum payable is £100. *Garrard v. Lewis*, 10 Q. B. D. 30, 34, 35.

19. A bill is drawn, "Pay to the order of C. one hundred." In the margin is inserted £100. This is a bill for £100. *R. v. Elliot*, 1 Leach, C. C. 175.

20. Bill in the form, "Pay to my order twenty-five pounds, ten shillings." This is sufficient as a bill for £25.10s. *Phipps v. Tanner*, 5 C. & P. 488.

21. The word "dollars" may be supplied by parol if it be clear that such was the word intended, and that it was omitted by mistake. *Beardsley v. Hill*, 61 Ill. 354.

22. If a bill ran simply, "Pay to my order £—," evidence would be inadmissible to show the sum for which it was intended to be drawn. *Norwich Bank v. Hyde*, 13 Con. 279; *Saunderson v. Pipers*, 5 Bing. N. C. 431.

23. But in the latter case the blank may be filled. See section 20; *Collis v. Emmett*, 1 H. Bl. 313; *Russell v. Langstaff*, 2 Doug. 514; *Molloy v. Delves*, 7 Bing. N. C. 428; 1 *Randolph* 136-139.

24. Bill for £2 The sum payable

25. B. make year after his dea r. Greenwell, 10 See also Req., 5th

26. Bill payable the last day of the

10. A bi

(a) Which demand, or c

(b) In w expressed ;

(2) When it is overdue,

so accepts, or deemed a bill

The following h

1. " When den

2. " When cal Bowman v. McCh

3. " On reques

4. " At such ti Stonemetz, 15 Wi

5. " Payable La Rocque v. And

6. Payable on Fla. 417.

7. Indorsement several States to

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it presented for p

explained disci Mo. 331; Bishop

Mo. 210; Berry Crawford, 8 Ser

53; Baskerville 2 N. H. 159; E

Shackleford, 2 No Benton v. Gibson

Pryor v. Bowman,

(1) In England a The Canadian Parl

24. Bill for £200, payable six months after date with interest. The sum payable at maturity is £205. *Doman v. Diddin*, R. & M. 381.

§ 10.

25. B. make a note expressed to be payable with interest one year after his death. Interest runs from the date of the note. *Rofley v. Greenwell*, 10 A. & E. 222; *Richards v. Richards*, 2 B. & Ad. 447. See also *Req.*, 5th Feby., 1868, D. 68, 1, 386.

26. Bill payable during a given month will draw interest from the last day of the month. *Pollard v. Yoder*, 2 A. K. Marsh 264.

10. A bill is payable on demand:—

Bill payable
on demand.

(a) Which is expressed to be payable on demand, or on presentation (1); or

(b) In which no time for payment is expressed;

(2) Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or an indorser who so indorses it, be deemed a bill payable on demand.

Acceptance.
&c., when
overdue.

The following have been held to be payable on demand:—

1. "When demanded." *Kingbury v. Butler*, 4 Vt. 458.

2. "When called for." *Bilderback v. Burlingame*, 27 Ill. 35. *Bowman v. McChesney*, 22 Gratt. 609.

3. "On request." *Howland v. Edmonds*, 24 N. Y. 307.

4. "At such times as A. may need for her support." *Corbett v. Stonemetz*, 15 Wis. 187.

5. "Payable on demand within day and year after date." *La Rocque v. André*, 2 L. C. R. 335.

6. Payable on demand the first of January next. *Brett v. Ming*, Fla. 447.

7. Indorsement after maturity has been held by the courts of several States to be equivalent to drawing a new bill payable on demand, and reasonable diligence should be exercised to have it presented for payment. An interval of two and a half months explained discharges the indorser. *Light v. Kingsbury*, 50 Mo. 331; *Bishop v. Dexter*, 2 Conn. 419; *Moody v. Mack*, 43 Mo. 210; *Berry v. Robinson*, 9 Johns. 121; *McKinney v. Crawford*, 8 Serg. & R. 351; *Bemis v. McKenzie*, 13 Fla. 53; *Baskerville v. Harris*, 41 Miss. 535; *Dwight v. Emerson*, 2 N. H. 159; *Eefert v. Des Condres*, 1 Mill. 69; *Course v. Shackelford*, 2 Nott & M. 283; *Allwood v. Haseldon*, 2 Bail. 457; *Benton v. Gibson*, 1 Hill (S. C.) 56; *Levy v. Drew*, 14 Ark. 334; *Pryor v. Bowman*, 38 Iowa 92; *Jones v. Middleton*, 29 Iowa 188;

(1) In England a bill "at sight" is payable on demand, sect. 10. The Canadian Parliament would not accept the change.

§ 11.

McKewer v. Kirtland, 33 Iowa 348; Swartz v. Reddell, 13 Kans. 550; Leavitt v. Putnam, 1 Sandf. 199; Patterson v. Todd, 18 Penn. St. 426; Hill v. Martin, 12 Martin 177. See sections 36 and 45.

Bill payable
at a future
time.

11. A bill is payable at a determinable future time, within the meaning of this Act, which is expressed to be payable:—

(a) At a fixed period after date or sight;

(b) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening is uncertain;

As to contingencies.

(2) An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

See section 3.

The following promises are payable at a determinable future time:—

1. "By November 1st." Preston v. Dunham, 52 Ala. 217.
2. "On or by" such a day. Massie v. Belford, 68 Ill. 290.
3. "On or before" such a day. Bates v. Leclair, 49 Vt. 229.
4. "On or before three years from date." Holmer v. Krolick, 3 Mich. 371.
5. On a day named "or before, if made out of the sale" of a machine. Ernst v. Steckman, 74 Penn. St. 13.
6. Two months after H. M. ship "Swallow" is paid off. Colehan v. Cooke, Wills, 399; Carlos v. Fancourt, 5 T. R. 482.
7. On the 1st January, when X. comes of age. Goss v. Nelson, 1 Burr. 226. See section 3, n. 28a.
8. One year after notice. Clayton v. Gosling, 5 B. & C. 360.
9. One year after my death. Rolley v. Greenwell, 10 A. & E. 222. Contra Toulouse, 6th January, 1837, J. P. 37, 2, 115.
10. Two months after demand in writing. Price v. Taylor, 5 H. & N. 540; 29 L. J. Ex. 331.
11. Five years after the opening of the S. railway. Ex parte Gibson, L. R. 4 Ch. 662. See contra, Blackman v. Lehman, 35 Amer. R. 57.
12. When convenient. Works v. Hershey, 35 Iowa 310; Kincaid v. Higgins, 1 Bibb. 396.

The following are conditional and invalid:—

13. When I marry X. Pearson v. Garret, 4 Mod. 212.
14. When I am in good circumstances. Ex parte Toote!, 4 Ves. 372; Salinas v. Wright, 11 Tex. 572.
15. Thirty days after the arrival of ship "Swallow" at Calcutta. Palmer v. Pratt, 2 Bing. 185.
16. Ninety days after sight, or when realized. Alexander v. Thomas, 16 Q. B. 333.

17. Ninety days after sight and the settling of

18. Payable on or before 133 Mass. 151.

19. Payable on or before

20. "To be paid or not to be paid"

21. "When in full"

22. "As soon as possible" Wiggins v. Vaughn

23. "When the bill is due" Georgia, 21 Ga. 287

24. One year after the 1st June, 18

12. Where a bill is payable at a fixed period after

the acceptance of the bill

after sight is

therein the time

the bill shall be

Provided that the bill is

faith and by means of

in every case

the bill subscribed

holder in due

thereby, but subject to

the date so inserted

See sections 13, 20

13. Where a bill is payable

indorsement or

unless the condition

the true date of

indorsement, and

Hutchins v. Cohen

§ 12.

17. Ninety days after the dissolution of partnership between C. and X. and the settling of the books. *Sackett v. Palmer*, 25 N. Y. 179.

18. Payable on demand or in three years. *Maloney v. Fitzpatrick*, 133 Mass. 151.

19. Payable on a day certain "or at any time before maturity."

20. "To be paid as wanted for her support; and if no part is wanted, it is not to be paid." *Gordon v. Rundlett*, 28 N. H. 435.

21. "When in funds." *Gillespie v. Mather*, 10 Penn. St. 28.

22. "As soon as I am in possession of funds from the estate of B." *Watts v. Vaught*, Cheves 91.

23. "When the amount shall be collected." *Corbett v. State of Georgia*, 21 Ga. 287.

24. One year after the admission of a substitute into the army. *Ream*, 1st June, 1846, J. P. 48, 2, 333.

12. Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly;

Provided that (a) where the holder in good faith and by mistake inserts a wrong date, and (b) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course, the bill shall not be voided thereby, but shall operate and be payable as if the date so inserted had been the true date.

See sections 13, 20 and 63.

13. Where a bill or an acceptance, or any indorsement on a bill, is dated, the date shall, unless the contrary is proved,⁽¹⁾ be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be;

⁽¹⁾ Date *prima facie* evidence.

⁽¹⁾ *Hutchins v. Cohen*, 14 L. C. J. 85.

§ 13.

Certain dat-
ings not to in-
validate.

(2) A bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date on a Sunday or other non-juridical day.

See sections 12, 20 and 63.

1. The *prima facie* presumption arising from the date may be rebutted, *e. g.*, to defeat the Statute of Limitations, or to establish that a party to the bill was a minor or otherwise incapable. *Montague v. Perkins*, 22 L. J. C. P. 187; *Hays v. David*, 3 L. C. R. 115.

2. When an impossible date, *e. g.*, September 31st, is expressed, the last day of the month is assumed to be the date intended. *Wagner v. Kenner*, 1 Rob. 120.

3. Where a firm note, dated before, was given after, the dissolution of the partnership, that fact may be shown in defence by the outgoing partner. *Woodford v. Dorwin*, 3 Vt. 82.

4. A fraudulent ante-dating or post-dating, *e. g.*, to evade a prohibitory law, renders the bill invalid. *Field v. Wood*, 6 Dowl. P. C. 23; *Serle v. Norton*, 9 M. & W. 309; *Bayley v. Taher*, 286.

5. If a bill be post-dated, and one of the parties to it die before the day of its date arrive, it will still be valid in the hands of a *bona fide* holder for value. *Passmore v. North*, 13 East. 517; *Usher v. Dancy*, 7 Camb. 97.

6. Defendant, a Nova Scotian resident in Paris, gave an accommodation note bearing date "Halifax, N. S., 6th, 1875," payable to M. on demand, and enclosed it to M. on the 11th June. The 6th of June being Sunday, M., on receipt of the note, altered the 6 to 8, and inserted at the top the word "June," which had been omitted.

Held, that, as the liability of the maker was not increased, the note being payable on demand, and the alteration was made to correct a manifest mistake on the part of the maker, the note was good. *The Merchants Bank v. Stirling*, 1 R. & G. 439. See section 20. But the alteration is material under section 63. See notes under that section.

7. A note dated on Sunday in payment of a horse purchased on that day is invalid in Quebec between the original parties. *Côté v. Lemieux*, 9 L. C. R., 221; as to Ontario see *Crombie v. Overholzer*, U. C., 11 Q. B. 55; *Houlston v. Parsons*, U. C., 9 Q. B. 681. See also *Hearney v. Kinch*, 7 L. C. J. 31. See notes.

8. Where a bill was dated on Sunday, it was held that there was no presumption of the acceptance having been made on that day. *Begbie v. Levi*, 1 Crompt. & J. 180.

9. It may be shown that a bill dated on Sunday was really delivered on another day. *Clough v. Davis*, 9 N. H. 50; 1 Randolph, 9 n. 9.

10. A note dated on Monday is good in the hands of a *bona fide* holder, although really executed and delivered on Sunday. *Houlston v. Parsons*, U. C., 9 Q. B. 681; *Crombie v. Overholzer*, U. C., 11 Q. B. 55; *Cranston v. Goss*, 107 Mass. 439; and several other cases cited in Randolph, vol. 1, p. 91, n. 4.

Under section 13, sub-sec. 2, it is no objection to the validity of a bill or a note that it bears a date on a Sunday. But will

bill or note made
made on that day.

In Quebec, "a person shall sell or buy a bill or note on a Sunday." Rev. Stat. c. 10, s. 45, enacted by the 45th Geo. 3, c. 1, s. 1 and 2; see Quebec statute c. 10, s. 45, and is altogether inoperative as to a note, therefore before the Bills of Exchange Act, 1890, immediate parties.

Kerich, supra, says that, under the law, either in Canada or in England, a bill made on a Sunday is void, but that in this case the fact is not expressed.

In *Côté v. Levi*, the note was dated on a Sunday on the same day, with the learned judge

therefore, it is perfectly valid. The actions of a commissionaire on the Sunday." *See* *supra*, but it is to be indicated in the statute almost a legal maxim, "a signature under a power of attorney is illegal and void at law." *See* *Statutes*, §§ 45 and 46. Thus, it would seem that a bill dated on a Sunday, for a period of time, is void in Quebec by

It may be observed that a deed of mortgage is generally all contracts except deeds of judgment. In Ontario, the same rule is enforced. The Revised

bill or note made and dated on a Sunday, for a transaction also made on that day, be valid?

§ 13.

In Quebec, "no shop-keeper, pedlar, hawker, or other person shall sell or retail any goods, wares or merchandise during Sunday." Rev. St. Que., art. 3498. This provision was first enacted by the 45 George III., c. 10, s. 1; C. S. L. C., c. 23, arts. 1 and 2; see also 43 Viet., c. 4, s. 5; 45 Vic., c. 9, s. 2. The Quebec statute merely enacts a penalty against the offender, and is altogether silent as to the effect upon contracts. A bill or a note, therefore, made on a Sunday in the Province of Quebec, before the Bills of Exchange Act, was held valid between the immediate parties. Mr. Justice Monk said in the case of *Kearney v. Kerich*, *supra*, n. 7: "The Court does not know of any law, either in Canada or England, which declares that a note made on a Sunday, is a nullity and void." It would seem that in this case the plaintiff was a holder in due course, although this fact is not expressly stated in the report.

In *Côté v. Lemieux*, Mr. Justice Stuart held that a note dated on a Sunday, and given in payment of a horse purchased on the same day, was null and void, under the 45 Geo. III., c. 10. The learned judge observed: "The object of the legislature, therefore, it is perfectly evident, is to prevent all sales or transactions of a commercial or trading nature from taking place on the Sunday." Such was undoubtedly the object of the legislature, but is it to be carried out in any other manner than the one indicated in the statute, viz., the imposition of a fine? It is almost a legal maxim that where any thing is prohibited by statute *under a penalty*, a contract founded upon such thing is illegal and void at least between the immediate parties. Endlich on Statutes, §§ 450, 451, where all the authorities are collected. Thus, it would seem that before the Act, a note made or dated on a Sunday, for a trade transaction closed the same day, was void in Quebec between the immediate parties.

It may be observed that notaries can validly pass in Quebec a deed of mortgage, a lease, a sale of real or personal estate, and generally all contracts, on a Sunday as well as any other day, except deeds of *juridiction contentieuse*. 46 Viet., c. 32, s. 34.

In Ontario, the observance of the Sabbath is more strictly enforced. The Revised Statutes of Ontario, 1887, ch. 203, sect. 1,

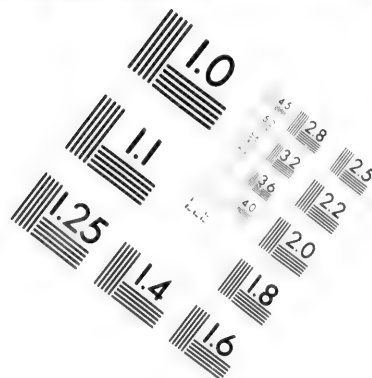
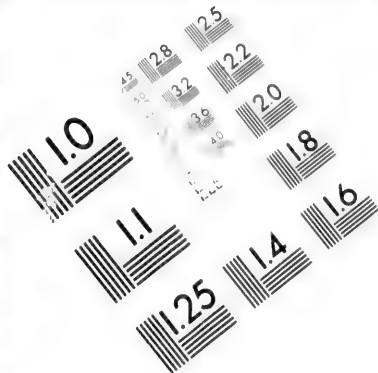
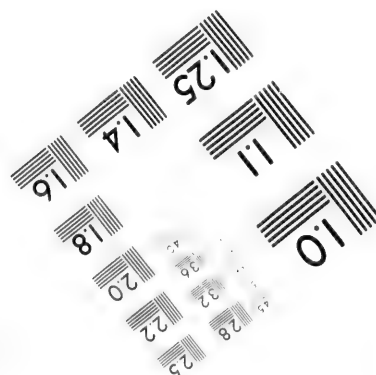
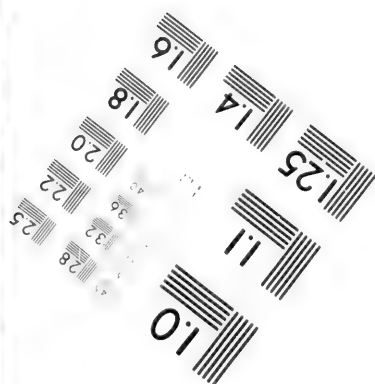
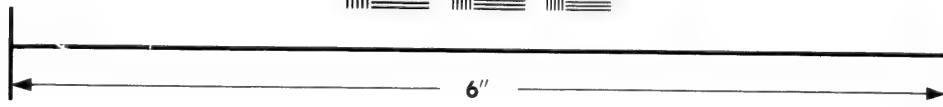
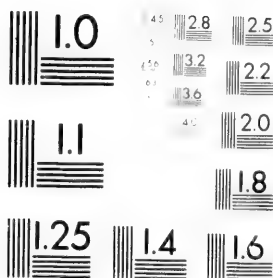


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§ 13. enacts: "It is not lawful for any merchant, tradesman, artificer, mechanic, workman, laborer or other person whatsoever, on the Lord's Day to sell or publicly shew forth, or expose, or offer for sale, or to purchase, any goods, chattels, or other personal property, or any real estate whatsoever, or *to do or exercise any worldly labor, business or work of his ordinary calling* (conveying travellers or Her Majesty's mail, by land or by water, selling drugs and medicines, and other works of necessity, and works of charity, only excepted)."

Section 8: "All sales and purchases, and all contracts and agreements for sale or purchase of any real or personal property whatsoever, made by any person or persons on the Lord's Day, shall be utterly null and void."

These two sections were first enacted by the 8 Vic., c. 45, ss. 1 and 2, and have ever since been in force in Ontario.

In *Houlston v. Parsons*, and in *Crombie v. Overholtzer*, supra, n. 7, the Court of Queen's Bench held on a demurrer, that a note made on a Sunday for goods sold on that day, although void between the immediate parties, was valid in the hands of an innocent holder for value. Chief Justice Robinson, in *Crombie v. Overholtzer*, said: "The statute 8 Vic., c. 45, makes void all contracts of sale made on a Sunday; but that affects merely the consideration for this note itself. (1) This plea relies on the bare fact that the transaction out of which this note arose was illegal as between the original parties, without averring anything that might make such a defence available against this plaintiff, an innocent holder, for all that appears for value."

These provincial statutes evidently come into conflict with section 13 of the Bills of Exchange Act. This section says that "the bill is not invalid by reason only that it bears date on a Sunday." If it can bear date on a Sunday, it can be dated on that day. So far, the Act repeals the local statutes passed before Confederation; but it seems doubtful whether it authorises a bill to be made and dated on a Sunday for a transaction effected and closed that day. It may be said that the Parliament of Canada, which, alone, has exclusive jurisdiction in matters of trade and

(1) It seems that it affects more the capacity to contract. See section 22, n. 34.

commerce, is prohibiting and perhaps the bill would

14. W the day d follows:—

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commerce, has not repealed the provisions of the old local statutes prohibiting trade transactions on the Sabbath, beyond the dating and perhaps the making of the note on that day. At all events the bill would be valid in the hands of a holder in due course. § 14.

14. Where a bill is not payable on demand, the day on which it falls due is determined as follows:—

(a) Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace; Provided that:—

(1) Whenever the last day of grace falls on a legal holiday or non-juridical day in the Province where any such bill is payable, then the day next following, not being a legal holiday or non-juridical day in such Province, shall be the last day of grace;

(2) In all matters relating to bills of exchange, the following and no other shall be observed as legal holidays or non-juridical days, that is to say:—

(a) In all the Provinces of Canada, except the Province of Quebec—

Sundays;
New Year's Day;
Good Friday;
Easter Monday;
Christmas Day;

The birthday (or the day fixed by proclamation for the celebration of the birthday) of the reigning sovereign; and if such birthday is a Sunday, then the following day;

§ 14. The first day of July (Dominion Day), and if that day is a Sunday, then the second day of July as the same holiday; any day appointed by proclamation for a public holiday, or for a general fast, or a general thanksgiving throughout Canada; and the day next following New Year's Day and Christmas Day, when those days respectively fall on Sunday;

(b) And in the Province of Quebec the said days, and also—

The Epiphany;
The Annunciation;
The Ascension;
Corpus Christi;
St. Peter and St. Paul's Day;
All Saints' Day;
Conception Day;

In every Province.

(c) And also, in any one of the Provinces of Canada, any day appointed by proclamation of the Lieutenant-Governor of such Province for a public holiday, or for a fast or thanksgiving within the same, or being a non-juridical day by virtue of a statute of such Province;

Days to be computed when time begins to run.

(3) Where a bill is payable at sight, or at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment;

When time begins to run.

(4) Where a bill is payable at sight or a fixed period after sight, the time begins to run from the date of the acceptance if the bill is accepted,

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and from the date of noting or protest if the bill § 14.
is noted or protested for non-acceptance, or for
non-delivery ;

(5) The term "month" in a bill means the "Month."
calendar month ;

(6) Every bill which is made payable at a month ^{Reckoning of time.}
or months after date becomes due on the same
numbered day of the month in which it is made
payable as the day on which it is dated—unless
there is no such day in the month in which it is
made payable, in which case it becomes due on
the last day of that month—with the addition,
in all cases, of the days of grace.

Days of grace :—

1. A note dated 31st January is payable "without grace" one
month after date. It is due on February 28th. A similar note, dated
January 1st, would be due on February 1st. *Roehner v. Knicker-*
bocker Life Ass. Co., 63 N. Y. 160.

2. A note for £100 is made payable by two equal instalments, on
January 1st and February 1st. The instalments fall due on January
4th and February 4th. *Oridge v. Sherborne*, 11 M. & W. 374.

3. A bill dated January 1st is payable thirty days after date. It
is due on February 3rd. *Chalmers*, 32.

4. A non-negotiable note, not payable on demand, is entitled to
days of grace. *Smith v. Kendall*, 6 T. R. 123.

5. A bill dated 28th November, a bill dated 29th November, and
a bill dated 30th November, each being payable three months after
date, all fall due on March 3rd, inasmuch as February has but
twenty-eight days. *Cass*, 13th August, 1817, cited in *Bédarride*, vol.
I, p. 409. See also *Chalmers*, 37.

6. A note made on the 28th, 29th, 30th or 31st of January, payable
one month after date, is due on the 28th of February with days of
grace. *Wagner v. Kenner*, 2 Robinson, 120.

7. Days of grace are a matter of right and not of favor. *Wiffen v.*
Roberts, 1 Esp. 262.

8. A bill drawn in Amsterdam, dated 1st January, and payable in
London at double usance, falls due on 4th March. *Mutford v. Wal-*
cot, 1 Ld. Raym. 574. A usance is of thirty days running from the
day following the date of the bill. 4 *Alauzet*, 165 ; 2 *Nouguier*, 89.

9. A bill "at sight," or "on demand at sight," is entitled to days
of grace. *Dixon v. Nuttall*, 1 *Crompt. M. & R.* 307 ; *Ca.* 12 *Vict. c.*
22, s. 5. *Contra* in England, 45 and 46 *Vict.*, c. 61, ss. 10, 14.

10. The holder of a foreign bill, payable sixty days after sight,

§ 15. makes an agreement that if it be dishonored by non-acceptance he will re-present it for payment at maturity. Acceptance is refused. The time of payment must be calculated from the day the bill was protested, and not from the day of presentment to the drawee for acceptance. *Campbell v. French*, 6 T. R. 200. Sect. 14 (4).

11. As a promissory note cannot be accepted, "after sight" in a note means after mere exhibition to the maker. *Sturdy v. Henderson*, 4 B. & Ald. 592.

12. When a bill after sight is protested for non-acceptance and accepted *supra* protest, the time of payment must be calculated from the date of the acceptance. *Williams v. Germaine*, 7 B. & C. 468; S. C. 1 M. & R. 394. Otherwise by sect. 14 (4) and sect. 64 (5).

Case of need.

15. The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he thinks fit.

It is unnecessary to present an inland bill to the referee in case of need, called in French *le besoin* or *recommandataire*. *Leonard v. Wilson*, 2 Crompt. and M. 589. The opposite rule prevails in France, Germany, United States and before the Act in Quebec. C. C. art. 2290. It is better to protest foreign bills for non-acceptance and then present the same to the *besoin*. See section 64.

Optional stipulations by drawer or indorser.

16. The drawer of a bill, and any indorser, may insert therein an express stipulation:—

(a) Negating or limiting his own liability to the holder;

(b) Waiving, as regards himself, some or all of the holder's duties.

See sections 3, 35 and 45.

1. The holder of a bill indorses it to D. thus: "Pay D. or order without recourse to me," or "Pay D. or order *sans recours*," or "Pay D. or order at his own risk," or "Pay D. or order without recourse, unless presented within 30 days." The indorser thereby passes his interest to D., but negatives or limits his liability as an indorser. *Goupy v. Harden*, 7 Taunt. 163; *Rice v. Stearns*, 3 Mass. 224; *Castrique v. Buttingie*, 10 Moore P. C. 110, 112, 117.

2. An a note, "to equivalent 32 Ala. 530

3. C., th "notice of protest," quent part January, 1 350; Req. vol. 4, p. 34 any party s prudent to g 51, 52.

4. But the only presen 22nd August

17. T by the d drawer.

(2) An with the

(a) It signed by the drawee

(b) It n perform b payment

(3) Wh nated or bill as the his proper per signat

See sections 50.

As to accept bill in a set, se

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1. Bill addr liable as accept

2. An assignment of "all my rights and title," indorsed on a note, "to be enjoyed in the same manner as may have been by me," is equivalent to an indorsement without recourse. *Hailey v. Falconer*, 32 Ala. 536. § 17.

3. C., the holder of a bill, indorses it to D., adding the words "notice of dishonor waived," "protest waived," "return without protest," "*retour sans frais*," "*retour sans protêt*." No subsequent party is obliged to give notice of dishonor to C. Cass, 22nd January, 1879, S. 79, 1, 177; Cass, 9th November, 1870, D. 70, 1, 350; Req. 10th April, 1876, D. 76, 1, 341. According to Alauzet, vol. 4, p. 340, and others, notice in that case is not necessary against any party subsequent to C., unless a contrary request is made. It is prudent to give him notice. *Chalmers*, 36. See section 46, nn. 50, 51, 52.

4. But the words *sans frais* on *retour sans frais* were held to waive only presentment and protest, but not notice of dishonor. *Lyon*, 22nd August, 1867, D. 67, 2, 225. See also section 46, n. 51.

17. The acceptance of a bill is the signification Definition of acceptance. by the drawee of his assent to the order of the drawer.

(2) An acceptance is invalid unless it complies Requisites of acceptance. with the following conditions, namely:—

(a) It must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient;

(b) It must not express that the drawee will perform his promise by any other means than the payment of money;

(3) Where in a bill the drawee is wrongly designated or his name is misspelt, he may accept the bill as therein described, adding, if he thinks fit, his proper signature, or he may accept by his proper signature.

See sections 18, 22, 23, 25, 26 and 56, and notes under sections 3 and 56.

As to acceptance *supra* protest, see section 64; acceptance of a bill in a set, section 70.

Signed by the drawee:—

1. Bill addressed to B. X. writes an acceptance on it. X. is not liable as acceptor. *Davis v. Clarke*, 6 Q. B. 16. See sections 23 and 56.

§ 17.

2. Bill addressed to B. B. accepts it. X. also writes an acceptance on it. X. is not liable as acceptor. *Jackson v. Hudson*, 2 Camp. 447. See *Steele v. M'Kinlay*, 5 App. Cas. 770. See section 56.

3. Bill addressed to B. B. accepts it, and before issue X. backs it with his signature. X. is not liable as acceptor, and parol evidence is not admissible to show that he guaranteed payment of the bill to the drawer. *Steele v. M'Kinlay*, 5 App. Cas. 754. But see section 56.

4. Bill addressed to the "Directors of the B. Company, Limited." The acceptance is signed by two directors and the manager. The manager is not liable as acceptor. *Bult v. Morrell*, 12 A. & E. 745. See sections 25 and 26.

5. Bill addressed to B. & Co. B., a partner in the firm, accepts it in the firm's name, adding also his own name. This is the acceptance of the firm, and not of B. personally. *Re Barnard*, 32 Ch. D. 447, C. A. See *Tudor*, Lead. C. 3rd. ed., p. 474, and sections 22, 25, 26 and 56.

6. Bill addressed to B. and X. B. alone accepts. B. is liable as acceptor. *Owen v. Von Uster*, 10 C. B. 318.

7. Bill addressed to B. & Co. for partnership purposes. X., a partner in that firm, accepts it in his own name. He is liable, but the firm is not under section 23 of the Act. See *Tudor*, 3rd ed. 474; *Chalmers*, 39.

8. Bill addressed to B., who is a partner in the firm of X. & Co. B. accepts in the firm name. B. is personally liable as acceptor. *Nicholls v. Diamond*, 9 Exch. 154. *Mare v. Charles*, 5 E. & B. 978; sect. 23.

9. Bill addressed to William B. His wife accepts it, signing the acceptance "Mary B." If he authorizes her so to accept, or afterwards promises to pay the bill, he is liable as acceptor. *Lindus v. Bradwell*, 5 C. B. 583.

10. The acceptance of a cheque, by the president and manager of the bank upon which it is drawn, at a future date, is good and valid. *Exchange Bank v. Banque du Peuple*, 10 L. N. 362; *M. L. R.*, 4 Q. B. 232. The cheque is then a bill. See section 72.

11. Cheques fraudulently initialed as accepted by the manager of a bank cannot be repudiated by the bank, when they are held by a *bona fide* holder for value. *Banque Nationale v. City Bank*, 17 L. C. J. 197. Section 21.

12. The drawee of a bill writes an acceptance on the back of it. This is sufficient. *Young v. Glover*, 3 Jur. N. S. 637.

13. A. draws a bill on B. B. writes thereon the word "Accepted," but does not sign it. It was proved that he was in the habit of thus making his acceptances. This is not an acceptance. *Turin*, 14th May, 1810, S. 11, 2, 50. *Rej.* 28th Dec., 1824, S. 25, 1, 286; 4 *Alauzet*, 1307; *Chalmers*, 39.

14. The acceptance or certification of a cheque by a bank is as binding as its notes of circulation. *Merchants Bank v. State Bank*, 10 Wall. 604; *Cooke v. State Bank*, 52 N. Y. 96.

A promise to accept:—

15. A. draws a bill on B. B. writes a letter to A. accepting or promising to accept the bill and shows the letter to the holder. This is not an acceptance. *Brussels*, 23rd Dec., 1809, S. 10, 2, 273; *Rej.* 15th May, 1850, S. V. 50, 1, 444; *Paris*, 20th Feb., 1830, S. 30, 2, 369; *Cass.* 16th April, 1823, S. 23, 1, 211; *Lyon*, 21st August, 1827, S. 28, 2, 6; *Paris*, 22nd March, 1834, S. V. 36, 2, 460; *Caen*, 5th March, 1849, S. V. 49, 2, 403; *Lyon*, 9th August, 1848, S. V. 49, 2, 164; *Paris*, 18th July

1849, S. V. 49, 2, 164; *Rej.* 16th Aug., 1850, S. V. 50, 1, 444.

16. But a bill drawn on a bank by a holder, who is not a partner in the firm, is not a bill of exchange. *Rej.* 16th Aug., 1850, S. V. 50, 1, 444.

17. Under the Act, a bill drawn on a bank by a holder, who is not a partner in the firm, is not a bill of exchange. *Rej.* 16th Aug., 1850, S. V. 50, 1, 444.

18. A firm's telegram, which is a bill of exchange, is not a bill of exchange, if it is not a bill of exchange. *Rej.* 16th Aug., 1850, S. V. 50, 1, 444.

19. A bank's principal balance, which is a bill of exchange, is not a bill of exchange, if it is not a bill of exchange. *Rej.* 16th Aug., 1850, S. V. 50, 1, 444.

20. On the thinking that a bill of exchange is not a bill of exchange, the telegram is not a bill of exchange. *Rej.* 16th Aug., 1850, S. V. 50, 1, 444.

Held, that inducing payment by a bill of exchange is not a bill of exchange. *Rej.* 16th Aug., 1850, S. V. 50, 1, 444.

Held, also, that inducing payment by a bill of exchange is not a bill of exchange. *Rej.* 16th Aug., 1850, S. V. 50, 1, 444.

21. The drawer of a bill of exchange, who is not a partner in the firm, is not a partner in the firm. *Rej.* 16th Aug., 1850, S. V. 50, 1, 444.

§ 17.

1849, S. V. 49, 2, 527; Nancy, 16th March, 1849, S. V. *ibid.*; Chalmers, 39; 1 Bédarride, 338; 4 Alauzet, n. 1310.

16. But the drawee will be liable to the drawer for all damages. *Rej.* 16th April, 1888, D. 19, 1, 96; *Rej.* 16th March, 1825, S. 26, 1, 28; *Summers v. City Bank*, L. R., 9 C. P. 580; Chalmers, 171.

17. Under certain circumstances, he will be responsible in damages to the holder, *v. g.* if he has funds in his hands to provide for the bill, or has issued a letter of credit which is shown to the holder. *Nisbet v. Galbraith*, 3 La. An. 9; *Carrolton Bank v. Taylor*, 16 Louis. 490; *Von Phul v. Sloane*, 2 Robins-on 148; *Cass.* 16th March, 1825, 19 J. P. 305; *Cass.* 5th April, 1837, J. P. 1, 1837; *Limoges*, 22nd June, 1837; *ibid.* 1, 1838, 212; *Rouen*, 19th March, 1861, J. P., 62, 2, 11; 1 Bédarride, n. 166; 4 Alauzet, n. 1314 to 1319. See sect. 53.

18. A firm in Montreal drew on a firm in Toronto on the faith of a telegram from the drawees that they might do so in order to retire a previous draft coming due. The plaintiffs discounted it, the first draft was retired, and the drawees then refused to accept.—*Held*, in accordance with *Torrance & Bank of British North America* (17 L. C. J. 185 & 1 Dig., p. 152, art. 88), that the drawees were liable. *The Molsons Bank v. Seymour et al.*, 21 L. C. J. 82, S. C. 1877, & 23 L. C. J. 57, Q. B. 1878; see also *Segond v. Thomas*, 10 Louis. 299.

19. A bank acting as agent for another bank, is not authorized, in the absence of express agreement, to cash a cheque drawn upon the principal bank, but not accepted by it. A telegram from the president of the principal bank to a depositor therein, stating that certain funds are at his credit, is not an acceptance of a cheque drawn by the depositor on receipt of such telegram for the amount of the funds, such telegram adding nothing to the legal obligation of the principal bank towards the depositor to pay the cheque when duly presented for payment, if there were then funds at his credit to meet it, and no legal hindrance to its payment existed. *Maritime Bank v. Union Bank of Canada*, M. L. R., 4 S. C. 244. See section 53.

20. On the maturity of a bill of exchange, the drawers thereof, thinking the acceptor would be unable to meet it, telegraphed him if unable to pay it to draw on them for the amount. The acceptor took the telegram to the manager of the plaintiffs' bank, who on the faith of it discounted a sight bill drawn by the acceptor on the drawers, with the proceeds of which he retired his acceptance which was held by another bank. The drawers refused to accept the bill so re-drawn.

Held, that the telegram having been sent for the purpose of inducing persons to advance money on it, and to take the bill so drawn in pursuance of it, a privity was created between the plaintiffs and the defendants, senders of the telegram, entitling the former to maintain an action against the latter for the money so advanced.

Held, also, that no time being mentioned in the telegram, an authority to draw at sight would be implied. *Bank of Montreal v. Thomas*, 16 O. R. 503; see also *Coolidge v. Parsons*, 2 Wheaton, 66; *Bigelow*, 50; *Robey v. Ollier*, L. R., 7 Ch. 695; *Ranken v. Alfaro*, 5 Ch. D. 786; *Shimmelpennich v. Bayard*, 1 Peters, 264.

21. The drawee of a bill of exchange who has refused to accept may nevertheless be condemned to pay the amount thereof to the holder, when the facts of the case and the documents produced prove that said bill was made upon the demand of the drawee and in his interest, the latter binding himself to repay the amount, and that the drawer provided the funds and handed the same to the drawee, only

§ 17. in view of the engagement entered into by the latter. Cass., 2 Dec 1873 (Bossière), S. 74, 1, 246; Cass. 19th April, 1875, S. 75, 1, 250.

22. The drawee who has promised to accept may nevertheless refuse to do so if in the meantime the drawer has failed. 2 Pardessus, pp. 139, 205, 207, 324, et seq.

23. A bill drawn by an officer of government on another officer need not be accepted; it is accepted by the very act of drawing, the drawer and drawee being merely agents of the same principal. *Baker v. Montgomery*, 4 Martin, 92.

Acceptance. Acceptance consists in the engagement of the drawee to pay the bill according to the tenor of his acceptance. Section 17, sub. 1, and section 54 (a).

The number of acceptances cannot exceed that of the drawees mentioned in the bill, unless they be for honor. If several drawees exist, the holder must request an acceptance from all of them. Section 41 (b); *Vagliano v. Bank of England*, 58 L. J. Q. B. 357.

Acceptance must be given upon presentment, or at the latest within two days thereof; and in default of the drawee's giving the same, the bill should be treated as dishonored. It may be so treated even before such term if the drawee refuse to accept. Sections 42 and 43.

A bill may be accepted after having been refused, and even after maturity. In the latter case it is payable on demand. Sections 10 and 18. Before the Act it was payable at sight.

Acceptance is only required where presentment for acceptance is necessary. See section 39.

With regard to the form of acceptance, the Act, sections 17 and 64, enacts:—

1. That it be in writing;
2. That it be written on the bill itself, or upon one of the parts thereof, if issued in a set;
3. That it be signed by the drawee;
4. That it be payable in money only.

Section 17, sub. 2, declares that an acceptance is invalid unless it complies with these conditions.

The English Act contains similar provisions in sections 17 and 65.

Previous to the Act of 1849, there was no law in Quebec regulating the form of an acceptance. The latter could be made, as before the ordinance of 1673, by separate deed, simple correspondence, or even verbally. 1 Rev. de Lég. 510; 2 ib. 334. The custom of verbal acceptance was done away with by the

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ordinance of 1673, tit. 5, art. 2, which required that the acceptance should be in writing, although not exacting, like our statute, the putting of such acceptance upon the bill itself. It is contended that this ordinance was not in force in Quebec for want of registration by the Superior Council of Quebec. Whether registered or not, it seems beyond dispute that it was followed and enforced as law, during the French *régime*. See "Jugements et Delibérations" (just published), vol. 4, p. 935.

§ 17.

As a necessary consequence of section 17, a tacit acceptance cannot be inferred from the drawee's retaining the bill in his possession for an undue length of time, without writing any acceptance, and without returning the instrument to the holder. Nevertheless, Pothier remarks that: "S'il paraissait du dol de la part de celui sur qui la lettre est tirée, qui aurait exprès amusé longtemps le porteur, sous le faux prétexte qu'il a adiré la lettre afin de l'empêcher de se pourvoir contre le tireur, pour se faire par lui donner caution faute d'acceptation, et que pendant ce temps le tireur eût fait banqueroute, celui sur qui la lettre est tirée, qui a amusé le porteur, serait tenu de l'acquitter comme s'il l'eût acceptée; mais cette obligation ne naît pas d'une acceptation, n'y en ayant pas eu; elle naît de son dol; c'est ainsi qu'on doit entendre l'arrêt rapporté par de la Serra, ch. 10." *Contrat de Change*, n. 46.

Tacit
acceptance.

Writing is required by the statute as being an essential element of an acceptance, and parol evidence to establish the latter is inadmissible. The statute, in this respect, goes beyond the ordinance of 1673, art. 2, which simply required the acceptance to be in writing, without pronouncing as to the validity of any other acceptance.

Therefore, Pothier's opinion, n. 43, that in the case of a verbal acceptance, the holder should be allowed to demand the decisory oath or *serment décisoire* of the defendant, cannot be followed in Quebec.

An acceptance is generally expressed by the word *accepted* or "Accepted," *seen*, or its equivalent, such as *I will acquit, I will honor, I will pay*, followed by signature. The expression sanctioned by trade is that of *accepted*, followed by signature. The simple signature of the drawee entails an acceptance, and in the United States, and the United Kingdom, before the Act, the word *accepted*

(b) When it is overdue, or after it has been §19. dishonored by a previous refusal to accept, or by non-payment ;

(2) When a bill payable after sight is dishonored by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

Date, in case of acceptance after dishonor.

See section 17.

1. A. draws a bill on B., dated January 1st, payable one month after date. The holder presents it for acceptance in March. B. accepts. As regards B. this is a valid acceptance of a bill payable on demand. *Mutford v. Walcot*, 1 Ld. Raym. 574; see sect. 10 (2).

2. The holder of a bill payable one month after sight presents it to the drawee for acceptance. Acceptance is refused. A week after it is re-presented, and accepted. The acceptance is valid. *Wynne v. Raikes*, 5 East. 514.

3. B. accepts, without dating, a bill drawn payable three months after date. He attains his majority the day before the bill matures. This is *prima facie* evidence that B. accepted it while an infant. *Roberts v. Bethell*, 12 C. B. 778. See sect. 23, n. 26.

4. A bill of exchange was drawn payable in three equal instalments. When the first instalment became due, the holder presented it at the bank, where it was payable; the cashier paid the first instalment and returned the bill to the holder with the following indorsement: "Paid on the within \$741, August 12, 1861." *Held*, an acceptance for the remaining instalments. *Berton v. Central Bank*, Hil. T. 1863. N. B. Stev. Dig. It seems doubtful that this decision will hold good under sections 17 and 18 of the Act.

19. An acceptance is either (a) general, or (b) qualified: a general acceptance assents without qualification to the order of the drawer; a qualified acceptance in express terms varies the effect of the bill as drawn :

General and qualified acceptance.

(2) In particular, an acceptance is qualified which is :—

Qualified acceptance.

(a) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated; but an

§ 19. acceptance to pay at a particular specified place is not conditional or qualified;

(b) Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

(c) Qualified as to time;

(d) The acceptance of some one or more of the drawees, but not of all.

General or qualified :—

1. An acceptance, whenever possible, is to be construed as general and not qualified. *Fanshawe v. Peet*, 26 L. J. 314.

2. An acceptance "when in funds" means when the acceptor is in the possession of cash which the drawee has a right to demand and receive or to appropriate. *Wintermute v. Post*, 4 Zab. 450; *Swansey v. Breck*, 10 Ala. 533; *Julian v. Shobrooke*, 2 Wils. 9.

3. Available securities are not funds until converted into money. *Hunter v. Ingraham*, 1 Strob. 271; *Gallery v. Prindle*, 14 Barb. 186.

The following have been held conditional or qualified :—

4. An acceptance to pay "as remitted for." *Banbury v. Lissett*, 2 Strange, 1212.

5. Or "on account of the ship 'Thetis,' when in cash for the said vessel's cargo." *Julian v. Shobrooke*, 2 Wils. 9.

6. "As soon as he should sell such goods." *Smith v. Abbott*, 2 Strange, 1152.

7. Or "until a way bill was paid." *Pierson v. Dunlop*, 2 Cowp. 571.

8. Or "until the ship with the wheat arrives." *Milne v. Prest*, 4 Camp. 393.

9. "When he would obtain those funds from France." *Mendizabel v. Machado*, 3 Moore & S. 841.

10. If a certain house should be given up to the drawee before a named day. *Swan v. Cosc*, 1 March, 177.

11. A cheque accepted conditionally does not bind the acceptor till the condition is fulfilled. *Dufresne v. Jacques Cartier Building Society*, 5 R. L. 235. *Ontario Bank v. McArthur*, 5 Ma. R. 381; *Paris*, 31st March, 1838, J. P. 40, 2, 40; 1 Bédarride, 369.

12. The defendant accepted an order: "Accepted, payable when in funds as a first preference out of the estate of C. F. & Co." Held, that the evidence did not show such a fulfilment of the condition upon which the acceptance was made as to make the defendant liable upon it to the plaintiffs; that the trustees, under the assignment, had a first lien for the amount of the advances made by them, and might have interfered to prevent defendant from treating moneys received, as received by him as assignee, until their claim had been first discharged; the defendant was not bound to go into particulars, and show to whom, and when, and under what circumstances, the money was paid by him; but that the burden was on plaintiffs of showing misappropriation of the funds. *Potter v. Taylor*, 20 N. S. R. (8 R. & G.) 362; 7 C. L. T. 434; also 7 R. & G. 385.

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The following acceptances are also qualified or conditional:—

§ 19.

13. Extending the time of payment. *Russell v. Phillips*, 14 Q. B. 891; *Burthe v. Donaldson*, 15 Louis. 382.

14. "Payable in money, half in goods." *Petit v. Benson*, Comberb. 452; *Rowe v. Young*, 2 Bligh H. L. 409.

15. "Accepted, payable on giving up bills of lading for clover per ship 'Amazon.'" *Smith v. Vertue*, 30 L. J. C. P. 56.

16. "On condition that it be renewed." *Russell v. Phillips*, 14 Q. B. 891; *Fanshawe v. Peet*, 26 L. J. Ex. 314.

17. Defendants accepted two drafts in the following words:—"We will keep the sums of \$605 and \$405.25 from the first estimate of McLean and Moran & Co., as requested above, provided they have done sufficient work to earn that sum." The condition having been fulfilled, held, that they were liable. *McLean v. Shields*, 1 Ma. R. 278 Sec. supra n. 11.

18. In England and, before the Act, in Ontario, Prince Edward Island, Manitoba, an acceptance "payable at the Union Bank and not elsewhere" was qualified acceptance. *Halstead v. Skelton*, 5 Q. B., 86 Ex. Ch. Otherwise under clause 19, par. (a) of the Canadian Act. See also section 45, n. 15.

An acceptance may be either general or qualified. A general acceptance is an engagement to pay the bill absolutely according to its tenor. Section 19. The holder may refuse any acceptance which is not general; for the drawee, as mandatory to the drawer, is requested to accept in the form and tenor adopted by the drawer. Indeed the payee receives the bill only on that condition. The taking of any other acceptance would expose him to the loss of his recourse against the drawer and indorser. Section 44.

A qualified acceptance varies the tenor of the bill, either by being made for a smaller sum or by changing the date of maturity or the place of payment, or otherwise modifying the terms of the engagement of the drawer. In all cases of a qualified acceptance, the holder should at once notify the prior parties, and if they fail to express their dissent within a reasonable time, they are deemed to have assented to it. Section 44.

An acceptance for a less sum constitutes a refusal for the surplus, and the holder may reject it. He may take this partial acceptance and protest for the balance, and the prior parties will remain liable, provided due notice of this partial acceptance be given to them. Section 44.

If the owner of a bill allow the acceptance to be made for a longer term, he cannot demand payment before the expiration of the delay granted. Such extension cannot prejudice the drawer

§ 19.

or the indorsers who are discharged, unless they have expressly or impliedly authorized the same. Section 44; 2 Revue de Législation, 171. The bill is then held at the risk and peril of the holder, who has no other recourse than that against the acceptor. The drawer is not, however, discharged, unless it is proved that at the time of maturity upon the face of the bill he had forwarded the necessary funds to the drawee. Sect. 46, sub-sect. (c).

It sometimes happens that the drawee, without changing the term of maturity, stipulates in his acceptance, that the bill, originally payable at his domicile or some other place, shall be payable at some particular place, for instance, at a bank where he has an account. The advantage of this acceptance is evident. The acceptance of a bill payable at a banker's is tantamount to an order to the banker to pay the bill. *Vagliano v. Bank of England*, 58 L. J. Q. B. 357. Section 24, n. 3.

“Not
elsewhere,”

About 1820, there arose in England serious doubt and difficulty as to whether an acceptance, which simply expresses a bill to be payable at a banker's, was general or qualified. The question was finally brought up before the House of Lords in *Rowe v. Young*, 2 Bligh H. L. 391, where it was held that such an acceptance was qualified. In 1821, the British Parliament promulgated the 1 and 2 Geo. IV., c. 78, which declared “general” every acceptance specifying a place of payment, unless it contained the words “*only and not otherwise nor elsewhere*.” This provision was introduced in Lower Canada by s. 7, of the 12 Vict., c. 22, 1849. The mercantile community of Montreal, being more or less unacquainted with the English practice, failed to comply with the requirements of section 7 of the Act of 1849, and in 1850 the legislature re-established the old custom, and declared, so far as Lower Canada was concerned: 1st, That the words *only and not otherwise, nor elsewhere* were not and would not be necessary; and 2nd, that the indication of a particular place would be sufficient to make the acceptance “qualified.” 13 and 14 Vict., c. 23, s. 4. The law remained unaltered in Ontario, and in 1864 was extended to Prince Edward Island by a statute of the Assembly of that province. 27 Vict., c. 6, art. 1. See *Ca. Rev. St.*, ch. 123, ss. 9 and 16.

The English Bills of Exchange Act, sect. 19 (c), has re-enacted 1 and 2 Geo. III., ch. 78.

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When the Act was under consideration both in the Commons § 19. and the Senate, the provision of the English Act gave rise to a good deal of discussion. Ontario members stood for the maintenance of the English rule, while Quebec, Nova Scotia and New Brunswick were unfavorable to any change. Finally, section 19 was suggested by the Senate, and adopted as a compromise. Now, an acceptance payable "at a particular place" must everywhere be treated as general and not qualified, so that this stipulation may be made by the acceptor, without his thereby causing any loss or danger to the holder. The use of the words "there only and not elsewhere" having no practical meaning should be discontinued. Whether they are used or not, the bill must be presented at the particular specified place. Section 46 (1); and the drawer and indorsers are not discharged by their insertion in the acceptance. Sections 19, 44 and 52.

The acceptance may be *conditional*. Sect. 19 (a). Article Conditional acceptance. 124 of the Code de Commerce prohibits any conditional acceptance.

The ordinance of 1673, title 5, art. 2, declares that all bills of exchange are accepted *purely and simply*, in this sense, that the holder need not be satisfied therewith, and might have the bill protested, just as if the same had not been accepted. Pothier, du Change, n. 47 and n. 94. The English and American jurisprudence contains similar provisions.

A conditional acceptance is a qualified acceptance, and, consequently, what was already said on this subject need not be repeated here.

Can the drawee, who is the creditor of the holder of a bill payable on demand, set off his claim and accept payable to himself? Can the holder refuse this qualified acceptance or payment, for a bill payable on demand does not require acceptance? Pothier says that the holder cannot refuse this acceptance, payment or compensation. "Le refus que je lui fais par cette espèce d'acceptation, de lui faire un paiement réel, étant un refus qui procède de ce qu'il est mon débiteur, et par conséquent qui procède de son fait, ne peut donner lieu à aucun recours de sa part. Pareillement, si un créancier du propriétaire de la lettre de change, avant que je l'eusse acceptée, avait fait saisir entre mes mains ce que je dois ou devrai par la suite à ce propriétaire,

§ 20. j'accepterai en ce cas la lettre pour payer à qui sera par justice ordonné avec un tel saisissant, sans que le propriétaire de la lettre puisse se plaindre de cette acceptation, puisque c'est son fait qui donne lieu à la restriction qu'elle renferme." Du Change, n. 47. See also de la Serra, c. 10; Persil, de la Let. de change, 165-169; Nouguier, Let. de Change, pp. 234-240; 2 Pard., art. 372; Story on Bills, p. 269, § 241, note 5.

Inchoate instruments.

20. Where a simple signature on a blank paper is delivered by the signer in order that it may be converted into a bill, it operates as a *primâ facie* authority to fill it up as a complete bill for any amount, using the signature for that of the drawer, or the acceptor, or an indorser; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a *primâ facie* authority to fill up the omission in any way he thinks fit;

When to be filled up.

(2) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given; reasonable time for this purpose is a question of fact;

As to subsequent holder.

Provided, that if any such instrument, after completion, is negotiated to a holder in due course, it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

See sections 12, 29 and 35.

Blanks and imperfect instruments:—

1. The general rule of law upon this subject is that one who gives his signature as maker, acceptor, drawer, or indorser, and intrusts the same to another to fill up the contract and make him party to a negotiable instrument, thereby confers upon the person so intrusted, as to all purchasers for value without notice, the right to complete the contract at pleasure, both as to names, terms, and amount; no matter upon what private understanding the blank was made. *McInnes v. Milton*, U. C. 30, Q. B. 489; *Sanford v. Jones*, 6 O. S. 104;

Larkin v. Whit, 330; *Whit v. Stowell*, Putnam v. 197; *Sittig Elliott v. C*, 554; *Ledw N. Y.* 531; *son*, 20 *Wis send v. Fr*, Gothrup v. Riom, 22nd 1858, cited 1, 57, and Seine, 26th p. 276, n. 1.

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Larkin v. Wiard, 5 O. S. 661; Angle v. Northwestern Ins. Co., 92 U. S. 339; Whitmore v. Nickerson, 25 Mass. 496; Greenfield Sav. Bank v. Stowell, 123 Mass. 196, 199, 203; Fearing v. Clark, 16 Gray 74; Putnam v. Sullivan, 4 Mass. 45, 54; Blakey v. Johnson, 13 Bush. 197; Sittig v. Birkestack, 38 Md. 158; Dunham v. Clogg, 30 Md. 284; Elliott v. Chesnut, 30 Md. 562; Michigan Bank v. Eldred, 9 Wall. 554; Ledwick v. McKim, 53 N. Y. 307; Van Duzer v. Howe, 21 N. Y. 531; Burson v. Huntingdon, 21 Mich. 415; Van Etta v. Even-son, 20 Wis. 33; Farmers' & M. Bank v. Horsey, 2 Houst. 385; Town- send v. France, 2 Houst. 441; Armstrong v. Harshman, 61 Ind. 52; Gothrupt v. Williamson, 61 Ind. 599; Yocum v. Smith, 63 Ill. 321; Riom, 22nd July, 1817; Agen, 16th May, 1853; Bastia, 15th December, 1858, cited in Bédarride, vol. I, p. 155; Cass. 29th March, 1832, S. 33, 1, 57, and Bordeaux, 27th March, 1854, cited in 4 Alauzet, 23; also Seine, 26th July, 1864; and Paris, 13th May, 1865, cited in 4 Alauzet, p. 276, n. 1410.

The filling of the following blanks was held authorized and bind- ing:—

2. "Three—after date," by writing "month."

3. A note signed in blank. Devaney v. Brownlee, 8 A. R. 355; Sanford v. Ross, 6 O. S. 104.

4. Filling up a blank indorsement in France. Agen, 1st April, 1873, D. 75, 2, 216; Req. 14th January, 1873, D. 73, 1, 235; Req. 5th November, 1872, D. 74, 1, 37.

5. Bill drawn payable "to —or order." Any *bonâ fide* holder may insert his name. Crutchly v. Mann, 5 Taunt. 529; Mutual Safety Ins. Co. v. Porter, N. B. 2 Allen 230.

6. Bill signed "Per O. A. Howland, William Stockdale, manager," the name of the Company on whose behalf they intend to sign having been left in blank and never filled. Held, that the note was never perfected. Brown v. Howland, 15 A. R. 730. But held in France that a bill payable to the drawer's order, indorsed in full, but not signed, was perfect and valid. Cass., 16th June, 1846, D. 46, 2, 117.

7. It is no objection to the validity of a note that, at the time it was indorsed, it had not been signed by the maker; the subsequent filling up of the maker's name, or of the amount, or of the payee's name, will be treated as if made before the indorsement. Rossin v. McCarty, U. C. 7 Q. B. 100; Hanscome v. Cotton, U. C. 15 Q. B. 42.

8. A person who takes an acceptance, with the drawer's name in blank, has no right to say that he may assume that that acceptance entitles any holder to insert any name as drawer which he thinks fit. Hogarth v. Latham, Law Rep. 3 Q. B. Div. 643, 652.

9. Any one who takes such an instrument, knowing that when it was accepted the bill had no drawer's name signed to it, takes it at his peril; and where the acceptance is made by a partner of a firm, in the firm name, in a matter not connected with the partnership, the holder must show that, in fact, the partner who did not write the acceptance authorized the signing of the firm name, with intent that it should be filled up by any person who took it. *Ib.*, Bramwell, L. J. And if an unauthorized name be filled in as drawer, by the holder, the latter cannot recover even against the accepting partner. *Ib.* Chemung Canal Bank v. Bradner, 44 N. Y. 680; Union Bank v. Bulmer, 2 Ma. R. 380. See section 22, n. 13 and following and section 30.

§ 21. *Chalmers, at p. 46, gives the following illustrations of inchoate instruments :*

10. B., having authority to do so, gives a blank acceptance for 100*l.* in the name of his firm. It is filled up after B.'s death. The surviving partners are liable. *Usher v. Dauncey* (1814), 4 Camp. 97.

11. B. gives C. a blank acceptance to accommodate him, and without receiving value. After B.'s death it is filled up and discounted with D., who sees it filled up. D. cannot recover the amount from B.'s estate. *Hatch v. Searles* (1854), 2 Sm. & G. 147; 24 L. J. Ch. 22.

12. B. gives a blank acceptance to a money-lender, who fills it up as a bill payable to drawer's order, inserting a fictitious signature as that of drawer and indorser. If the bill afterwards gets into the hands of a holder in due course he can recover from B. *Schultz v. Astley* (1836), 2 Bing. N. C. 544; *London & S. W. Bank v. Wentworth* (1880), 5 Ex. 96.

13. B. puts a blank acceptance in his desk. It is *stolen*, and then filled up as a bill. Even a holder in due course cannot recover from B., for he never delivered the inchoate instrument for the purpose of conversion into a bill. *Baxendale v. Bennett* (1878), 3 Q. B. D. 525, C. A. See also section 21, nn. 3 and 11; section 22, n. 31.

14. B. gives a blank acceptance in the name of his firm to C. without the authority of his co-partners. C. gives the bill in this state to his own partner for a private debt, who then fills in the name of C.'s firm as drawer and payee. C.'s firm cannot recover on this bill from B.'s firm. *Hogarth v. Latham* (1878), 3 Q. B. D. 643, C. A. See *supra*, n. 9.

15. B. and X. sign as makers a joint and several note, with blanks for date and payee's name. B. signs on condition that the note shall only be issued if Y. also will join as maker. Y. refuses to join. X., who is in possession of the note, represents to plaintiff that he has authority to issue it. He fills in plaintiff's name as payee, and transfers the note to him for value. Plaintiff cannot recover from B. *Awde v. Dixon* (1851), 6 Exch. 869. See *supra*, n. 8.

16. B. signs as acceptor a bill on a 6*d.* stamp, with the amount left blank. In the margin is 4*l.* This is fraudulently altered to 40*l.*, and the bill is filled up for forty pounds. A holder in due course can recover 40*l.* from B. *Garrard v. Lewis* (1882), 10 Q. B. D. 30. See sections 21, 24 and 63.

17. B., a bankrupt, gives a blank acceptance. It is filled up and negotiated after his discharge. The holder can recover, for it did not constitute a provable debt. *Goldsmid v. Hampton* (1858), 5 C. B. N. S. 94; 27 L. J. C. P. 286; Cf. *Ex parte Hayward* (1871), L. R. 6 Ch. 546.

18. An incomplete bill (no drawer's signature) which is sent by railway and lost, is not a security for the payment of money within the meaning of the Carriers Act. *Stoessiger v. S. E. Railway Co.* (1854), 3 E. & B. 549.

Contract not complete until delivery.

21. Every contract on a bill, whether it is the drawer's, the acceptor's or an indorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto ;

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Provided, that where an acceptance is written on a bill, and the drawee gives notice to, or according to the directions of, the person entitled to the bill, that he has accepted it, the acceptance then becomes complete and irrevocable ;

(2) As between immediate parties, and as regards a remote party, other than a holder in due course, the delivery :—

(a) In order to be effectual must be made either by or under the authority of the party drawing, accepting or indorsing, as the case may be ;

(b) May be shown to have been conditional or for a special purpose only, and not for purpose of transferring the property in the bill ;

But if the bill is in the hands of a holder in due course, a valid delivery of the bill by all parties prior to him, so as to make them liable to him, is conclusively presumed ;

(3) Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

See sections 2 (b), 29 and notes under section 30.

Delivery actual or constructive. Stolen bill.

1. There must be a delivery of the paper, either actual or constructive. *First National Bank v. Strang*, 72 Ill. 559 ; *Burson v. Huntington*, 21 Mich. 415 ; *Baxendale v. Bennett*, Law Rep., 3 Q. B. Div. 525.

2. A constructive delivery is made when the paper is intrusted to another, and put in circulation by the custodian contrary to the orders of the defendant. *Burson v. Huntington*, *supra*.

3. The acceptor cannot cancel his acceptance after he has notified the drawer that he is holding the bill accepted for the benefit of the holder. *Rej.*, 20th April, 1837, S. V. 37, 1, 442. But he can do so at any time whether within or after the two days allowed to accept, so long as he has not signified his acceptance. *Liège*, 26th March, 1811 ; *Lyon*, 9th August, 1848, J. P., 48, 2, 457 ; *Montpellier*, 29th July, 1836, J. P. 37, 1, 68 ; 4 *Alauzet* 157. See also notes under section 17 and section 62, n. 8.

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4. There is constructive delivery, when the defendant has been guilty of negligence, in failing to ascertain the nature of the contract which he has signed in favor of another. *Chapman v. Rose*, 56 N. Y. 137; *Whitney v. Snyder*, 2 Lans. 477. See notes under sec. 30.

5. Where a negotiable bill or note is *stolen* from the acceptor or maker, such party is not liable thereon to a *bonâ fide* indorsee for value, even though the acceptor or maker somewhat facilitated the theft by putting the paper in an unlocked drawer in chambers to which his clerk, landress, and other persons had access. *Baxendale v. Bennett*, Law Rep., 3 Q. B. Div. 525. See n. 11. But see notes under section 30.

The following illustrations are from Chalmers, p. 48:—

1. B., who owes C. 100*l.*, makes a note for the amount payable to C. B. dies, and the note is afterwards found among his papers. C. has no right to this note, and if it be given to him, he cannot enforce it. *Bromage v. Lloyd*, 1 Exch. 32.

2. B. makes a note in favour of C., and delivers it to a stakeholder (*e. g.*, trustee under composition deed). C. thereby acquires no property in the note. *Latter v. White*, L. R., 5 H. L. 578.

3. C., the holder of a bill, specially indorses it to D., and transmits it by post to X., his own agent. X. informs D. that he has received the bill, but does not give it to him, or undertake to hold it on his account. C. (probably) can revoke the transaction and cancel his indorsement to D. *Brind v. Hampshire*, M. & W. 365; *Muller v. Poudir* (1875), 55 New York R. 325. See *infra*, nn. 4, 5, 7.

4. C., the holder of a bill, specially indorses it to D., and incloses it in a letter addressed to D. The letter, which is put in the letter-box, is stolen by a clerk of C.'s, who forges D.'s indorsement and negotiates the bill. The property in the bill remains in C. *Arnold v. Cheque Bank*, 1 C. P. D. at 584.

5. By the regulations of the English Post-Office, a letter once posted cannot be reclaimed. If, then, the indorsee of a bill authorize the indorser to transmit it to him by post, the property in the bill passes to the indorsee, and the indorsement becomes complete as soon as the letter which contains the bill is posted. *Ex parte Cote*, L. R., 9 Ch. 27; *Sichel v. Borch*, 2 H. & C. 954; 33 L. J. Ex. 179.

6. The holder of a note payable to bearer wishes to remit money to D. For safety of transmission he cuts the note in half and posts the half to D. Before he posts the second half, he changes his mind, and writes to D. demanding back the half he has sent. He is entitled to do so, for a partial delivery is ineffectual. *Smith v. Mumby*, 29 L. J. Q. B. 172; Cf. *Kelmayne v. Burton*, 2 L. T. N. S. 324.

7. A bill is left with the drawee for acceptance. The drawee writes an acceptance on it. The next day the holder calls for the bill: he is merely informed that it is mislaid, and is requested to call the next day. In the meantime the drawee hears that the drawer has failed. He accordingly cancels his acceptance, and the next day delivers the dishonored bill back to the holder. This is no acceptance; the drawee was entitled to cancel it. *Bank of Van Diemen's Land v. Bank of Victoria*, L. R., 3 P. C. 526. See *ante*, p. 39.

8. A firm is indebted to D. X., who is a partner in the firm, and also agent for D., writes the firm's indorsement on a bill held by the firm, and puts the bill with some other papers of D.'s, of which he has the custody. This is a valid indorsement by the firm, and the property in the bill passes to D. *Lysaght v. Bryant*, 9 C. B. 46. Sect. 17, n. 5.

9. The holder delivering it to an indorsee, the indorsee is not liable to the testator. *D. Giddings v. R.*

10. X., by he does not delivers it to a good title. agent. *Wat S. 968; Arm.*

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14. C., the he may get to the bill to E. a good title, an it, he cannot s up that the b Richards, 6 Ex recover the bil R. 170; Al-ag Moore P. C. 31

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17. Oral evide renew notes, p inadmissible. C 1 R. & G. 510; N S. D. 101; T son, U. C., 14 of U. C. v. Jon Durand v. Steve

9. The holder of a bill specially indorses it to D., and dies before delivering it, but his executor subsequently hands the bill to D. The indorsement to D. is invalid, for an executor is not the agent of his testator. D. cannot sue on the bill. *Bromage v. Lloyd*, 1 Exch. 32; *Giddings v. Giddings*, 31 Am. R. 682. Sect. 26, n. 23.

10. X., by means of a false pretence, or a promise or condition which he does not fulfil, induces A. to draw a cheque in favour of C. X. delivers it to C., who receives it *bonâ fide* and for value. C. acquires a good title, and can sue the drawer, for X. is ostensibly the drawer's agent. *Watson v. Russell*, 31 L. J. Q. B. 304; affirmed 5 B. & S. 968; *Arnold v. Caldwell*, 1 Ma. R. 81. See s. 27, n. 62.

11. A. draws a cheque payable to bearer, intending to pay it to X. It is *stolen* from his desk before he issues it, and is subsequently negotiated to C., who takes it for value and without notice. C. perhaps acquires a good title and can sue A. *Ingham v. Primrose*, 1 C. B. N. S. at p. 85; 28 L. J. C. P. 294; *Kinyon v. Wohlford*, 10 Amer. R. 165; but see *supra*, n. 5. See notes under s. 30.

12. B. makes a note payable to C., who sues him on it. B. can defend himself by showing that the note was delivered to C. on condition that it was only to operate if he should procure B. to be restored to a certain office, and that B. was not so restored. *Jefferies v. Austin*, 1 Stra. 674.

13. C., the holder of a bill, indorses it in blank and hands it to D. on the express condition that he shall forthwith retire certain other bills therewith. He does not do so. D. cannot sue C., and if he sue the acceptor, the latter may set up the *jus tertii*. *Bell v. Lord Ingestre*, 12 Q. B. 317; *Seligman v. Huth*, 37 L. T. N. S. 488.

14. C., the holder of a bill, indorses it specially to D. in order that he may get it discounted for him. D., in breach of trust, negotiates the bill to E. If he take the bill *bonâ fide* and for value, he acquires a good title, and can sue all the parties thereto. If he do not so take it, he cannot sue C.; and if he sue the acceptor, the latter may set up that the bill is C.'s. *Lloyd v. Howard*, 15 Q. B. 995; *Barber v. Richards*, 6 Exch. 63. Further, C. can bring an action against E. to recover the bill or the proceeds. *Goggerley v. Cuthbert*, 2 B. & P. N. R. 170; *Alsager v. Close*, 10 M. & W. 576; *Muttyloll Seal v. Dent*, 8 Moore P. C. 319. See notes under sec. 30.

15. C., the payee of a bill, indorses it to D. D. sues C. as indorser. C. may show that he and D. were jointly interested in the bill, and that he indorsed to the latter to collect on joint account. *Denton v. Peter*, 1 A. R. 5 Q. B. 475.

16. B. makes a note for 100l. payable to C. or order. C. sues B. Evidence is admissible to show that the note was given as collateral security for a running account, and what the state of that account is. *Ex parte Twogood*, 19 Ves. 227; *Re Boys*, L. R. 10 Eq. 467.

Every contract on a bill not to be contradicted.—

17. Oral evidence to vary or contradict terms or effect of a bill, *v. g.*, to renew notes, postpone payment, modify liability of parties, etc., is inadmissible. *Graham v. Graham*, 2 R. & G. 265; *Jenkins v. Bosson*, 1 R. & G. 510; *O'Connor v. Wallace*, 1 R. & G. 92; *Inglis v. Allen*, 1 N. S. D. 101; *Taylor v. McFarlane*, 3 R. & G. 190; *Harper v. Paterson*, U. C., 14 C. P. 538; *Hayes v. Davis*, U. C., 6 Q. B. 396; *Bank of U. C. v. Jones*, 1 R. R. 185; *Bradbury v. Oliver*, 5 O. S. 703; *Burand v. Stevenson*, U. C., 5 Q. B. 336, 568; *McQueen v. McQueen*,

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U. C., 9 Q. B. 536; *Reed v. Reed*, U. C., 11 Q. B. 26; *Hart v. Davy*, U. C., 1 Q. B. 218; *Adams v. Thomas*, U. C., 7 Q. B. 249; *Hall v. Francis*, U. C., 4 C. P. 210; *Ewart v. Walker*, U. C., 5 Q. B. 610; *Armour v. Gates*, U. C., 8 C. P. 548; *Street v. Beckworth*, U. C., 20 Q. B. 9; *Harvey v. Geary*, U. C., 1 Q. B. 483; *Adams v. Forbes*, U. C., 13 Q. B. 485; *Porteous v. Muir*, O. R., 8 C. P. D. 127; *Chalmers*, 12, 18, 52; *Moore v. Sullivan*, U. C., 21 Q. B. 445; *Hammond v. Smith*, U. C., 16 Q. B. 371; *Imperial Bank v. Brydon*, Ma. R. vol. 2, p. 117; *Decelle v. Kamoiselle*, 32 L. C. J. 236. See *Louisiana Hennen's Digest*; vol. I., p. 236; *Taylor v. Curry*, 109 Mass. 36; *Byles*, 14th ed. 112.

18. But it is admissible to show that what purports to be a complete contract has never come into operative existence, or to impeach the consideration, or to show that the contract has been discharged by payment, compensation, release, or otherwise. *Abrey v. Crux*, L. R., 5 C. P. 45; *Ewin v. Lancaster*, 6 B. & S. 571; *Hubbard v. Guernsey*, 64 N. Y. 457; *Maillard v. Page*, L. R., 5 Ex. 312; *Chalmers*, 52.

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Capacity and Authority of Parties.

22. Capacity to incur liability as a party to a bill is co-extensive with capacity to contract ;

Provided, that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor or indorser of a bill, unless it is competent to it so to do under the law for the time being in force relating to such corporation ;

(2) Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.

See section 17.

*Corporations:—*See Appendix.

The following corporations have been held competent to become parties to a bill or note :—

1. All trading corporations in the course of their trade. Broughton v. Manchester Water Works Co., 3 B. & Ald. 1. See also Joint Stock Companies' Act, R. S. ch. 118, s. 35 ; ch. 119, s. 76.

2. A joint stock company is incorporated for the purpose of forming a *société anonyme* abroad for the construction of railways. The directors are empowered by the memorandum and articles of association to do whatever they may from time to time think incidental or conducive to the main object of the company. These terms cover the issue of bills, and such a company is liable on its acceptance. *Re Peruvian Railway Co.*, L. R., 2 Ch. 617.

3. Manufacturing companies. *Mott v. Hicks*, 1 Cow. 513 ; *Auerbach v. Le Sueur Mill Co.*, 28 Minn. 291 ; Joint Stock Cos' Act, Ca. Rev. St. ch. 118, s. 35 ; ch. 119, s. 76.

4. Building societies. *Cooley v. Dominion Building Society*, 24 L. C. J. 111 ; *Société de Construction du Canada v. La Banque Nationale*, 24 L. C. J. 226 ; *Snarr v. Toronto P. B. Society*, U. C. 29 Q. B. 317 ; *Davis v. West Saratoga Bldg. Union*, 32 Md. 285.

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5. A mutual insurance company in settlement of a loss even if signed by the president and treasurer, instead of the president and secretary. *Jones v. Mut. Ins. Co. of East. Town.*, 15 R. L. 500.

6. School Trustees. Corporation of the Township of Toronto *v.* McBride, U. C. 29 Q. B. 13. See also *Letellier v. School Commissioners*, etc., 16 R. L. 449. See cases cited in Boone, Law of Corporations, § 322.

See also *The Bank Act*, 53 Vict. c. 31, ss. 51, 60, 100.

The following corporations have been held incapable of being parties to a bill or note:—

7. In England, a corporation organized for the creation of public works, unless expressly authorized by its charter. *Broughton v. Manchester Water Works Co.*, 3 B. & Ald. 1. The rule is different in the United States. *McMasters v. Reed*, 1 Grant Cas. 36; *Le Canon*, etc., *Road Co. v. Adair*, 85 Ind. 244. See *supra*, n. 2.

8. A railway corporation, unless the power be expressly given. *Overend v. Mid Wales Ry. Co.*, L. R. 1 C. P. 499; *Topping v. Buffalo, B. & G. Ry. Co.*, U. C. 6 C. P. 141. But this rule is not followed in the United States. *Olcott v. Tioga Ry. Co.*, 40 Barb. 179; *Goodrich v. Reynolds*, 31 Ill. 490; and will probably be modified in Canada under the Railway Act, Ca. Rev. St., ch. 109, s. 6, sub. sec. 10. *Supra*, n. 2.

9. A mining company. *Gilbert v. McAnnamy*, U. C. 28 Q. B. 384; *Bateman v. Mid Wales Ry. Co.*, L. R. 1 C. P. 499; *Chalmers*, 57. Contra in the United States. *Mahoney Mining Co. v. Anglo California Bank*, Am. L. Reg. 1882, p. 100; *Moss v. Ayerel*, 10 N. Y. 449.

10. Companies incorporated under the Companies' Act of Quebec, 31 Vict. c. 25, unless the power be given by the by-laws of the company. *Coates v. The Glen Brick Co.*, 1 R. C. 121.

11. Municipal Corporations, unless expressly authorized by statute. *Pacaud v. Corporation of South Halifax*, In Review, 17 L. C. R. 563; *Martin v. City of Hull*, 10 R. L. 232. But held valid a note signed by the mayor and secretary-treasurer, when it is neither alleged nor proved that the note was given without authority and without lawful consideration. In appeal, *Corporation of Grantham v. Couture*, 24 L. C. J. 105, 2 L. N. 350. See also *Ledoux v. Picotte*, 2 L. N. 37; *Corporation of Belleville v. Fahey*, U. C. 5 L. J. N. S. 73. In the United States, express statutory authority is required. *Dively v. City of Cedar Falls*, 21 Iowa 565; *Wilson v. City of Shreveport*, 29 La. An. 673; *Clark v. City of Des Moines*, 19 Iowa 199; Mayor, etc., of *Wetumpka v. Wetumpka Wharf Co.*, 63 Ala. 611; *Gause v. City of Clarksville*, 5 Dill. 165. See cases cited in Boone, Law of Corporations, sect. 290; *Morawetz*, Priv. Corp. 2nd ed., § 597, 686.

12. The president and secretary-treasurer of school commissioners, without a special authorization from the corporation. *Letellier v. The School Commissioners of Outatchouan*, 16 R. L. 449.

Partners: See also section 17, n. 5, and section 21, n. 8.

13. A partner cannot use the name of the firm outside of its business without the consent of his co-partners. *Union Bank v. Bulmer*, 2 Ma. R. 380; *Graves v. Kellenberger*, 51 Ind. 66; *Livingston v. Roosevelt*, 4 Johns. 251; *Levieson v. Lane*, 32 L. J. C. P. 10; *Tudor*, 3rd ed. p. 484, where all the authorities are collected.

14. If one partner in trade becomes a party to a bill by using the firm's name, the act will render all the partners liable to a *bona fide*

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holder for value, although the other partners may be defrauded by the partner. *Henderson v. Corvette*, U. C. 16 Q. B. 324; *Hogg v. S. & G.*, 51 L. J. C. P. 155; *Tudor*, 3rd ed. 485. See sect. 23. (b).

15. The law presumes that each partner in trade is entrusted with a general authority in all partnership affairs, and when a bill is signed by one, the assent of the firm is presumed and the *onus* of proving the contrary rests on those seeking to rebut this presumption. *City of Glasgow Bank v. Murdoch*, U. C. 11 C. P. 138; *Tudor*, 1st ed. 3rd ed. p. 474. He may even bind the firm by a guarantee within the scope of the partnership dealings. *Tudor*, 479.

16. A bill was drawn up and accepted by "M. & McQ." The true name of the firm was "M., McQ. & Co." Held that the firm was not responsible. *Quebec Bank v. Miller*, 3 Ma. R. 17. Otherwise by section 17, sub-sect. 3. See sect. 23.

17. Special partnerships for other purposes than trade cannot issue notes unless specially authorized by all the partners. *Greenshade v. Dover*, 7 B. & C. 635; *Dickenson v. Valpy*, 10 B. & C. 129; *Bramah v. Roberts*, 3 Bing. N. C. 963; *Yates v. Dalton*, 28 L. J. Exch. 69; *Kambo v. Bullitt*, 22 How. 256. However, the indorsement of a note by a member of such a partnership for a firm debt will pass the property to the indorsee, even if done without the knowledge of his co-partners. *Smith v. Johnson*, 3 H. & P. 222.

17a. If it be shown in the case of partnerships which are not of a mercantile character that the power of one partner to draw or accept bills of exchange for the partnership is either necessary in that particular instance, or is usual in similar partnerships, it will be implied by law. *Dickinson v. Valpy*, 10 B. & C. 128; *Brown v. Kidger*, 3 Harv. N. 853.

18. One partner of a firm of attorneys and solicitors has no authority to give the name of the firm in indorsing notes. Authority, however, may be presumed from the fact that on other occasions he had indorsed in the same manner. *Workman v. McKinstry*, U. C. 21 Q. B. 623.

19. After dissolution made publicly known, a partner has no longer power to bind his firm. *Heath v. Samson*, 4 B. & Ad. 172; *Mayor v. Atkins*, 29 La. An. 586; *Lusk v. Smith*, 8 Barb. 570; *Bank of Montreal v. Page*, 98 Ill. 109. But he can transfer bills payable to the firm. *King v. Smith*, 4 C. & P. 108; *Lewis v. Reilly*, 1 Q. B. 349.

Married women:—

Are likewise incapable:

20a. In Quebec, married women without the authorization of their husbands, even for their own debts. *Danziger v. Ritchie*, 8 L. C. J. 103; *Badeau v. Brault*, 1 L. C. J. 171, overruling *Rivet v. Leonard*, 1 L. C. J. 172. But a married woman acting as the agent of her husband may sign alone *per proc.* *Norris v. Condon*, 15 Q. L. P. 184. It is sufficient for her to sign, "per procuration of my husband," without giving his name. *Brussels*, 18th February, 1888, and 11th June, 1889; *Angers*, 27th February, 1819, all cited in 1 *Bédarride*, 529.

20. The mere signature of the husband is sufficient. *Johnston v. Scott*, 3 L. N. 171.

21. In Quebec, a married woman separated as to property cannot bind herself for the debt of, or as surety for, her husband. *Scantlin v. St. Pierre*, 10 R. L. 52; *Jodoin v. Dufresne*, 3 L. C. R. 189; *Little v. Diganard*, 12 L. C. R. 178; *Byrnes v. Trudeau*, 14 L. C. R. 17; *Shearer v. Compain*, 5 L. C. J. 47; *Hamel v. Panet*, P. C. 2, App. Cas. 121;

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Walker v. Crébassa, 9 L. C. J. 76; Pariseau v. Trudeau, 13 R. L. 593; Martin v. Guyot, M. L. R., 1 S. C. 181; Klock v. Chamberlin, 31 L. C. J. 29, 11 L. N. 152; 15 Ca. S. C. R. 325; Chapdelaine v. Vallée, 16 R. L. 51; Union Bank v. Gagnon, 17 R. L. 118, 15 Q. L. R. 31; Artisans Prov. Bdg. Soc. v. Lemieux, Q. L. R. 35; Rhéaume v. Caille, 1 L. N. 340; Rabreau v. Leroux, 13 R. L. 378. The wife can even recover back what she has paid on behalf of her husband. Buckley v. Brunelle, 21 L. C. J. 133. But see Bank of Toronto v. Perkins, 1 Q. B. R. 357; Gorrie v. Ogilvie, 5 L. N. 261. See C. C. 1301; 4 Vict. c. 30, s. 36; Cons. Stat. of L. C., ch. 37, s. 55. See n. 36 and notes.

Bills and notes signed by a married woman in Quebec are however valid in the following cases:—

22. For provisions necessarily used in the family. Cholet v. Duplessis, 12 L. C. R. 303. St. Amant v. Bourret, 13 L. C. R. 238; Robert v. Rombert, 2 R. L. 188; Elliot v. Grenier, 1 L. C. L. J. 91. But see Brunau v. Barnes, 25 L. C. J. 245. Rousson v. Gauvin, 13 L. C. J. 82.

23. If she has benefitted by the transaction and to the extent of that benefit. Malhiot v. Brunelle, 15 L. C. J. 197; Artisans Prov. Bdg. Soc. v. Lemieux, 15 Q. B. L. 35.

24. If she be a *marchande publique* or trader in the course of her business, even without the signature or authorization of her husband. Girouard v. Lachapelle, 7 L. C. J. 289; Beaubien v. Hutson, 12 L. C. R. 47. But the holder in due course, acquainted with the fact that the bill is signed by a married woman, *marchande publique*, must show that the note was given in the course of her business. See sect. 30, n. 11a.

25. In Ontario and the other provinces, married women cannot bind themselves unless they have separate property, and to the extent of such estate. McHenry v. Davis, L. R. 10, Eq. 84; Merrick v. Sherwood, U. C., 22 C. P. 467. They can likewise endorse as surety for their husbands to the extent of their private estate. Merchants Bank v. Bell 29 Chy. 413.

Minors:—

26. Minors and infants incur no liability by drawing, accepting or endorsing, unless the transaction be ratified in writing after majority or for necessities of life. Fisher v. Jewett, N. B. Bert 35; Casgrain v. Chapais, 2 R. de L., 206; Yules v. Wales, 12 L. C. R. 292; Davis v. Kerr, 17 R. L. 620; Tiedeman, § 48.

27. In Quebec the minor must also allege and prove that he has been injured, and in what manner and to what extent, and he can be relieved only to the extent of his injury. Cartier v. Pelletier, 1 R. L. 46; Bluteau v. Gauthier, 1 Q. L. R. 187; Boucher v. Girard, 20 L. C. J. 134; Gagnon v. Sylva, 24 L. C. J. 251; Vernier v. Lortie, 1 Q. L. R. 234.

28. In Quebec, but not in the other provinces, a minor engaged in trade is reputed of full age for all acts relating to such trade. City Bank v. Lafleur, 20 L. C. J. 131; Daunais v. Côté, 5 L. C. R. 193; Browning v. Gale, 6 L. C. J. 251.

29. *Persons insane*, interdicted persons, or persons suffering a temporary derangement of intellect from disease, accident, drunkenness or other cause, are unable to become parties to a bill or note. Symes v. Farmer, 27 L. C. J. 185; Bouvier v. Collette, 31 L. C. J. 14;

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30. I., an infant, gave to M. a promissory note for the purchase money of a buggy, endorsed by his father, who was of an unsound mind, and unable to understand what he was doing. The father received no consideration, and M. was not aware of his condition:—Held, on appeal from the Master of Woodstock, affirming his decision, that the father's estate was not liable. Re James 9 P. R. 88.

31. D., an old man with enfeebled sight, is induced to sign his name on the back of a bill, by being told that it is a railway guarantee which he had promised to sign. The bill is negotiated to a holder in due course. D. is not liable as an indorser. Foster v. MacKinnon, L. R., 4 C. P. 704. See notes under sec. 30.

To enforce against any other party. See also sections 54 and 55 as to estoppels.

32. The incapacity of one or more of the parties to a bill in no way diminishes the liability of the other parties thereto. Grey v. Cooper, 3 Douglas 65; Martin v. Drake, 1 Robinson, 218; Petitpain v. Palmer, *Id.* 220; Hennen v. Bourgeault, 12 *Id.* 522. 4 Alauzet, p. 172. See section 5 (2).

33. So the incapacity of the married woman cannot be pleaded by her indorser or guarantor, *donneur d'aval*. Norris v. Condon, 14 Q. L. R. 184.

34. The nullity resulting from incapacity to contract may be opposed to a holder in good faith for value. Orleans, 3rd July, 1835, S. V. 35, 2, 417; 1 Bédarride, 304; Sprigg v. Boissier, 5 Martin N. S. 56; Gallon v. Matherne, La. An. 496; Chalmers, 54, 55; Tiedeman, § 48; 4 Alauzet, n. 1270. See *infra* sect. 27, 29 and 30, and especially notes under section 30.

The Act has disposed of the subject of capacity of parties to a Capacity. bill in the few words contained in section 22: "Capacity to incur liability as a party to a bill is co-extensive with capacity to contract." Questions of capacity must therefore be determined according to the laws in force in each province.

In all the provinces, as well as in England, any person may be a party to a bill, except married women, minors, and persons insane or interdicted. Other disabilities exist under some continental codes, as to clergymen, military men, prothonotaries, judges, single women, exchange brokers and non-traders, but they have no application in Canada. Georgen v. McCarthy, Stuart's R. 53; Bowie v. Skinner, *ibid.* 54.

In France, a party to a bill is amenable to the exceptional jurisdiction of the *Tribunaux de Commerce*, and is also subject to imprisonment or *contrainte par corps*. And for that reason, *v.g.*, women are incapacitated from becoming parties to a bill. But

§ 22.

in Canada, as well as in England, there is no "Tribunal de Commerce" and no imprisonment for debt, civil or commercial; and although in some of the provinces, in Quebec for instance, a summary jurisdiction or procedure has been provided for the recovery of bills, all persons capable of contracting, whether traders or non-traders, of either sex, may be parties to a bill. The only limit is that fixed by the laws particular to each province, with regard to the capacity to contract, and also by the laws of the Dominion with regard to corporations.

Married
women.

The disabilities affecting married women, infants and minors, insane persons, etc., are not the same in every province. In Quebec, no married woman can enter into a contract without the authorization of her husband. See *supra*, n. 19*a*, and also C. C. arts. 176, 296 and 986. If separated as to bed and board, *séparée de corps*, a married woman may contract alone and without her husband and give bills for all that relates to the administration of her property, C. C. art. 210. Likewise if the wife be merely separated as to property, C. C. art. 1422. If separated as to property, whether a trader or not, she cannot bind herself for the debt of, or as surety for her husband, n. 21; but with that authorization, she may incur a debt or become surety for a third party. The husband cannot bind himself together with her, and must appear only to authorize his wife; otherwise art. 1301 of the Civil Code would apply: "A wife cannot bind herself either with or for her husband otherwise than as being common as to property; any such obligation contracted by her in any other quality is void and of no effect;" and the old statute 4 Vict., c. 30, s. 36, upon which this article of the Code was based, declares that any such obligation "shall be absolutely null and void to all intents and purposes whatsoever."

If she be a trader, a married woman can bind herself in the course of her business, even without the knowledge of her husband, authorization in such a case being presumed. *Supra*, n. 24. If she denies that the bill was given in the course of her business, the holder will be bound to prove that fact; and even if the bill be held by a third party in good faith and for value, it seems that he will be bound to make such proof, whenever it appears upon the face of the bill or otherwise, that a married woman is a party to it. Sections 29 and 30 of the Act will not protect him in such case,

inasmuch as it," Chalmers *caveat emptor* title than to a bill is signed before taking her or her. Even if he is doubtful, proceed again declaration of her husband to the incapacity held to be the same reason. The declaration to his obtaining 1*a*. The party that he has signed it for the transaction contracted.

Where a party obtains no warranty it would seem that he cannot recover given for the bill under section the alleged given for the illegality," *supra*, *séparée*, must without some under the statutes, it seems.

These declarations present themselves become surety. Property Act at least in Canada.

inasmuch as the bill is not "complete and regular on the face of it," Chalmers, p. 81, says: "If the bill itself conveys a warning, *caveat emptor*, the holder, however honest, can acquire no better title than the person from whom he took it had." The fact that a bill is signed by a married woman is a warning to him, and before taking or discounting her paper, he should enquire from her or her representative as to the true facts of the case. Even if her declaration be in favor of the validity of the bill, it is doubtful indeed whether a holder in due course would succeed against her, when she afterwards establishes that her declaration was false, and that the bill really was for a debt of her husband, for the principle of the Quebec laws, applying to the incapacity of married women to contract, has always been held to be of public order and public policy. Likewise, for the same reason, art. 1003 of the Civil Code provides that the simple declaration made by a minor that he is of age forms no bar to his obtaining relief for cause of lesion. See section 30, n. 1a. The plaintiff must prove not only his good faith, and that he has given value for the bill, but that the married woman signed it for her own debt, or, if she be a trader, for an obligation contracted in the course of her trade.

Where a bill is complete and regular upon its face and contains no warning whatever as to the incapacity of any party to it, it would seem that even in that case the holder in due course cannot recover from a married woman, when the bill has been given for the debt of her husband. It would not be sufficient under section 30, for the plaintiff to prove that "subsequent to the alleged fraud or illegality," value has in good faith been given for the bill. The bill is not only "affected with fraud or illegality," but is absolutely void, and as to the married woman *séparée*, must be considered never to have existed. It is not without some hesitation that such a conclusion is arrived at, but under the state of the jurisprudence and the language of the statutes, it seems to be inevitable.

These delicate questions, peculiar to the Quebec law, do not present themselves in the other provinces, where a wife may become surety for her husband. Under the Married Women's Property Act, 1882, of England, introduced in all the provinces, at least in Ontario, Ont. Rev. St., c. 132, if a married woman

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§ 22.

draws, endorses or accepts a bill, she can be sued thereon as if she were a single woman. But if judgment be obtained, it can only be enforced against her separate estate. Chalmers, p. 56.

When the wife has no separate estate, under the common law of England, she cannot bind herself by a bill or note, without the consent of her husband, and so completely void is her obligation, that her promise to pay it, made after the death of her husband, is not binding upon her, unless it be based upon a new consideration.

Where the husband is an alien, or civilly dead, or where the wife is divorced, she is on the same footing as a single woman, which is likewise the case in England when she is judicially separated as to bed and board. 20 and 21 Vict., c. 85. But at common law, a judicial separation has no such effect. Chalmers, p. 56; Tiedeman, s. 61.

Minors. Minors and infants incur no liability on a bill, unless it be given for necessaries of life, or be ratified after majority, n. 26. This ratification must be in writing, signed by the debtor. Ont. Rev. St., c. 117, s. 8; C. C. L. C. Art. 1235. This is the law in all the provinces. See also Tiedeman, s. 46.

In Quebec a minor can be relieved only to the extent of his injury. *Supra*, n. 27. But if he be a banker, trader or mechanic, he is not relievable for cause of lesion from contracts made for the purposes of his business or trade. C. C. Art. 1005, but this rule does not apply to the other provinces. Tiedeman, s. 46; Chalmers, p. 56.

Interdicted persons, lunatics, persons intoxicated, like minors, cannot be parties to a bill, except when given for necessaries of life; and with that exception and others noted in the Quebec cases above, a bill or note given by these persons is absolutely null and void even in the hands of a holder in due course. As in the case of a married woman, the bill is not only affected with illegality, but has no existence so far as these incapacitated parties are concerned. Tiedeman, s. 48, says:—"It has been very generally held, that an infant cannot make a note or bill which will be valid for any purpose. It is held to be absolutely void." *Id.* s. 53:—"It would seem to be a better rule, that a lunatic's contract is voidable, whether the other party is ignorant of or acquainted with his mental condition." Tiedeman cites many

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cases in support of this rule. *Id.* s. 57:—"The legal effect of contracts, made by one in a state of intoxication, is affected in the same way by the intoxication of the contractor as they are by his insanity." § 22.

A corporation incurs no liability by drawing, indorsing or Corporations. accepting a bill, unless expressly or impliedly empowered by its act of incorporation so to do. The mere fact of incorporation for the purposes of trade would imply capacity to contract by bill. In the case of non-trading corporations, the power must be expressly given, or there must be terms in the charter wide enough to include it. See *Joint Stock Companies Act*, R. S., ch. 118, s. 35; ch. 119, s. 76. *Canada Joint Stock Companies Act* 1877, sect. 66; Stephens' "*Joint Stock Companies*," p. 207. See Appendix.

It is contended, and apparently with reason, that provincial legislatures cannot grant to corporations the power to become parties to bills or notes, the subject of bills of exchange and promissory notes belonging to the Dominion Parliament exclusively; but if incorporated for purposes of trade, the power may be exercised under the by-laws of the Company. *Supra*, n. 10.

Finally, section 22 of the Bills of Exchange Act, sub. Indorsement by incapacitated persons. sec. 2, provides that when a bill is drawn or indorsed by an infant, minor or corporation, the drawing or indorsement entitles the holder to receive payment of the bill and to enforce it against any other party thereto, though from want of capacity these persons may not be liable as drawer or indorser. See also *Civil Code*, Art. 987.

Can a married woman endorse a bill payable to herself, whether the paper be executed before or after her marriage? Will an indorsement pass the property in the bill? Section 22 is silent as to this point, and also as to indorsement by insane or interdicted persons, and having provided for the case of an indorsement by a minor, infant or corporation, it would seem that the rule therein laid down does not apply to the indorsement of the other incapacitated parties, according to the maxim "*expressio unius exclusio est alterius*." Tiedeman, s. 63, who examines this question carefully under the common law, says that it is certainly true that she cannot recover or exact payment of the maker, drawer or acceptor, nor will payment to her discharge the persons liable on the paper. Only the husband can receive payment. "The married

See 23.

woman," adds Tiedeman, "therefore, who is the payee in a negotiable instrument, cannot pass a legal title to the instrument, nor bind herself in any way by an indorsement, without the consent of the husband." But it seems that under the Married Women's Property Act, the wife's indorsement of her own paper would be valid, and would make her liable to the extent of her private estate. *Supra*, page 60.

Whether the indorsement be valid or not, the holder may maintain an action on the bill against the drawer, acceptor or maker, on the ground that the maker or drawer is estopped from denying the capacity of the payee. So also if the indorsee of the married woman himself indorses the instrument to another, his indorsement warrants the legality of the married woman's indorsement, and he is estopped from denying it. It seems that no other conclusion can be drawn from sections 54 and 55 of the Act.

These rules will also apply in Quebec to bills and notes payable to a married woman, and in all the provinces to indorsements by lunatics, insane or interdicted persons. See Tiedeman, s. 56.

In Quebec a bill is personal property, and when payable to a married woman, the husband alone can collect and sue upon it, if there be community of property. Where the wife is separated as to property, it forms part of her separate estate, and a payment made to her is valid, but she cannot endorse it or sue upon it without the authorisation of her husband. If the note be payable to a married woman, *marchande publique*, in the course of her trade, she may endorse it alone, but a suit for its recovery must be taken in her name assisted by her husband.

It may be mentioned here that under the Bank Act, s. 84, any married woman, minor or other person disqualified by law to enter into ordinary contracts, may make deposits with a bank and withdraw the same, provided it be in sums not exceeding at any time the sum of five hundred dollars. See also as to deposits in Savings Banks, 53 Viet., c. 32, s. 16. The total amount of such deposits in a Savings Bank cannot exceed \$2000.

Signature
essential to
liability.

23. No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such :
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(a) Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name; § 23.

Exceptions,

(b) The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm.

See sections 3, 17, 21 22, 38, 56, 58 and 90.

Signatures:—

As to signatures obtained by fraud, see notes under section 30.

The following signatures have been held sufficient:—

1. The signature of the maker or drawer at the bottom of the instrument, at the top or in the middle. *Knight v. Crockford*, 1 Esp. 90; *Saunderson v. Jackson*, 2 Bos. & P. 238; *Taylor v. Dobbins*, 1 Stra. 399; 1 Rand. 66.

2. A cross or mark in the presence of one or two witnesses. *Collins v. Bradshaw*, 10 L. C. R. 366; *Noad v. Chateauvert*, 1 R. de L. 229; *Paterson v. Pain*, 1 L. C. R. 219; *Thurber v. Desève*, M. L. R. 125; *Anderson v. Park*, 8 L. C. R. 479; overruling *Lagneux v. Casault*, 2 R. de L. 28; *Jones v. Hart*, *ibid.*, 58. The presence of the witness not essential. *Taylor v. Dobbins*, 1 Stra. 399; *Ruff v. Webb*, 1 Esp. 129; *Baker v. Dening*, 8 A. & E. 94; *George v. Surrey*, 1 Mood & M. 516; *Willoughby v. Moulton*, 47 N. H. 205; *Hilborn v. Alford*, 22 Cal. 482; 1 Randolph 64; *Pirie v. Smith*, Ross, 1 Lead. Cas. 48. See section 90.

3. A pencil signature or mere initials or a stamp, if intended as signatures. *Caton v. Caton*, L. R. 2 H. L. 143; *Bennett v. Bramfitt*, L. R. C. P. 28; *Saunderson v. Jackson*, 2 B. & P. 238; *Merchants Bank v. Spicer*, 6 Wend. 443; *Brown v. Butchers' Bank*, 6 Hill 443. *Pirie v. Smith*, *supra*. *Chalmers*, 257.

4. *Quare* as to a signature printed in the ordinary way. *Saunderson v. Jackson*, 2 Bos. & P. 239; *Schneider v. Norris*, 2 M. & S. 286; *Pennington v. Baehr*, 48 Cal. 565; *Ex parte Birmingham Banking Co.*, L. R. 3 Ch. App. 654. See section 90.

5. But in Quebec, bills and notes signed before a notary in the notarial form are not valid. *Gravelle v. Baudoine*, 7 L. C. J. 289; *Lacoste v. Chauvin*, 7 L. C. J. 339; *Séguin de la Salle v. Bergevin*, 15 L. C. R. 438; *Pigeon v. Dagenais*, 17 L. C. J. 21; *Contra Morin v. Legault*, 3 L. C. J. 55; *Crevier v. Sauriole*, 6 L. C. J. 257. See also *Brunet v. Lalonde*, 16 L. C. R. 347; *Cass* 15th March, 1825, 10th August, 1831, 18th November, 1833, 21st Febry., 1838; *Grenoble*, 17th November, 1836; 28th January, 1834; 28th January and 29th June, 1835; *Bordeaux*, 22nd January, 1839, all cited in 1 Bédarride, 63; 2 *id.* nn. 656, 662; *Alger*, 7th May, 1870, D. 71, 2, 1, *Rej.* 30th July, 1838, cited in 2 Pardessus, 144, 170; 4 Alauzet, 16, 178, 183, 190. See as to et cetera of words *ne varietur* on bills, *Fletcher v. The Bank of U. S.*, 8 Wheat. 338; *Bank of Kentucky v. Godale*, 20 An. 50; *Griffin v. Cowan*, 15 *id.* 487. See section 31, n. 6, and notes.

§ 23.

6. Bills under seal are not valid. *Wilson v. Gates*, 16 Q. B.; *Foster v. Geddes*, 1 L. Q. B. 239; *Crouch v. Credit Foncier*, L. R. 8 Q. B. 382, 383; *Merritt v. Cole*, 9 Hun. R. 98; 1 *Randolph*, 64; *Tiedeman*, § 12a. See *Can. Bank Act*, 53 Vict. c. 31, ss. 58, 59. See section 90.

7. Every signature or material part of a bill or note is presumed genuine till denied (in Quebec at least) by affidavit; 20 Vict. c. 44, s. 87; *Code of Civil Procedure*, art. 145; *Ryan v. Malo*, 12 L. C. R. 8; *Kelly v. O'Connell*, 16 L. C. R. 140; *Dorwin v. Thompson*, 3 C. L. J. 130; *Milloy v. Farmer*, 2 L. N. 182; *Clark v. Exchange Bank*, 3 L. N. 45; *Paige v. Ponton*, 26 L. C. J. 155; *Désilets v. Trahan*, 5 R. L. 52.

8. As to proof of signatures in Quebec, see 17 L. C. R. 485; *Lord v. Laurin*, 9 L. C. J. 71.

9. The third party for whose account a bill is drawn, called *le donneur d'ordre*, is not liable on the bill. *Paris*, 9th March, 1832, S. V. 32, 2, 338; *Cass.*, 27th August, 1832, S. V. 32, 1, 561; 2 *Pardessus*, 282; 4 *Alauzet*, 81; *Nonguier*, n. 170; and he has no right of action against the acceptor. *Bank of U. C.*, *Ruttan* 22 Q. B. 451; *Corporation of Perth v. McGregor*, U. C., 21 Q. B. 459.

10. The indorser of a bill indorsed in blank discounts it with a banker, without indorsing it. He is not liable. *Bank of England v. Newman*, 1 Ld. Raym. 442.

Bills before
notary.

A question of some practical importance to illiterate persons in Quebec presents itself under this section. Can a bill or note be made and signed before a notary in the notarial form? In the first edition of this work, in 1860, the statement was made, upon the authority of *Morin v. Legault*, supra, n. 5, that such a bill is valid.⁽¹⁾ Soon after in 1865, the point came directly before the Court of Appeals, where it was thoroughly discussed before *Duval, C. J.*, *Aylwin*, *Meredith*, *Drummond* and *Mondelet, J. J.*, in the case of *Séguin de la Salle v. Bergevin*. *Mondelet, J.*, for the Court, said: "We are all of opinion that such a document is not a note or *billet* affected by our Statute. It is in no wise a promissory note such as included in the category of notes affected by our Statute." The *motivé* of the judgment is that "le document n'est pas un billet dans le sens de la loi de ce pays."

In 1872, the question came up again before the Court of Appeals, *Duval, C. J.*, and *Drummond, Badgley*, and *Monk, J. J.*, and the decision in *Séguin de la Salle v. Bergevin* was re-affirmed. *Drummond, J.*, dissenting, believing "it to be incorrect in principle." *Badgley* and *Monk, J. J.*, were inclined to the same opinion, but would not depart from the views first laid down by the

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Court of Appeals. Chief Justice Duval and Caron, J., believed the case "to have been correctly decided."

§ 23.

In France, under the Code, the question was for a long time debated; Merlin, Duvergier and Massé holding that the bill could be made in notarial form, and Troplong and Dalloz maintaining the contrary. Pardessus supported both sides,—the one in his "Contrat de Change," and the other in his "Cours de Droit Commercial." See 15 L. C. R., p. 439. But it is now a well settled rule in France, that a bill or note may be in the notarial form, and that even it may contain the stipulation of a mortgage as security for its payment. Bédarride, vol. 2, p. 383, says: "Dans l'usage le plus général, le plus répandu, le billet à ordre est fait sous seing privé; mais comme la lettre de change elle-même, il peut être rédigé par-devant notaire et dans la forme authentique. Cette règle ne rencontre plus aucun contradicteur en doctrine et en jurisprudence; seulement on admet que l'acte est alors régi par les lois notariales et soumis aux mêmes formalités que les autres actes authentiques; que notamment il doit être enregistré dans le délai ordinaire."

Is not the meaning of the words BILL, NOTE, ENDORSEMENT, ACCEPTANCE, MAKER, INDORSER and BEARER, which have been consecrated by both usage and statutes, that of a writing under hand, destined to circulate from hand to hand like a piece of silver or a bank note? According to Pothier, Jousse, de la Serra, Savary and all the old commentators, such was the meaning of a bill or note under the old French law. 15 L. C. R. 440.

Whatever may be the prevailing opinion in France to-day, the jurisprudence seems to be well settled in England, the United States and Canada, that a bill or note is an instrument under hand only, and that when made otherwise, for instance under seal, it is not a bill. Parsons, Bills and Notes, vol. 1, p. 26. This is an old maxim of the English law, which section 90 of the Act has sanctioned. By sub-section 2, corporations are allowed to use their seal upon bills and notes; and by sub-section 1, "where, by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with *his own hand*, but it is sufficient if his signature is written thereon by some other person by or under his authority." The clear inference to be drawn from this provision is that a bill or note, and

§ 24. every contract upon it, are private writings. See also C.C.P. art. 89.

Mortgage.

If it seem evident that a mortgage cannot be stipulated in a bill or note, it is equally certain that the payment of a negotiable instrument may be secured by a mortgage in a separate deed, made and registered according to the laws in force in each province. In Louisiana, in such a case, the mere transfer of the note was held to operate as a transfer of the mortgage. See section 31, n. 7. In Quebec, Courts might perhaps go to that extent, if the mortgage be payable to the holder of the note; but it would be more prudent to have a regular deed of transfer or assignment, especially if the bill or note does not show upon its face that its payment is secured by a mortgage. Such a clause has nothing inconsistent with the essential ingredients of a bill or note, and in fact it is met with rather frequently in mortgage debentures. See ss. 53 and 82, sub-sect. 3; Byles, 14th ed. 13.

Forged or unauthorized signature.

24. Subject to the provisions of this Act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority:

Provided.

Provided, that nothing in this section shall affect the ratification of an unauthorized signature not amounting to a forgery: And provided also, that if a cheque, payable to order, is paid by the drawee upon a forged indorsement out of the funds of the drawer, or is so paid and charged to his account, the drawer shall have no right of

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Forgery a

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action against the drawee for the recovery back of the amount so paid, or no defence to any claim made by the drawee for the amount so paid, as the case may be, unless he gives notice in writing of such forgery to the drawee within one year after he has acquired notice of such forgery; and in case of failure by the drawer to give such notice within the said period, such cheque shall be held to have been paid in due course as respects every other party thereto or named therein, who has not previously instituted proceedings for the protection of his rights.

§ 24.

Proviso: as to payment on forged indorsement.

See sections 12, 20, 29, 30, 54, 55 and 63, and especially notes under sections 30 and 63.

Forgery and ratification :—

1. A forged indorsement is wholly inoperative even in the hands of a *bonâ fide* holder for value. *Larue v. Evanturel*, 2 L. C. J. 112.

2. *Quære* as to whether an acceptor who has accepted a forged bill, payable to the order of the drawer, after it has been discounted by the bank and has paid the same at maturity, is precluded from alleging the forgery of the signature of the drawer and payee, and can recover back the amount he has so paid. *Ryan v. Bank of Montreal*, 14 A. R. 533. See *Ashpital v. Bryan*, 3 B. & S. 489; 5 B. and S. 723; *Cooper v. Meyer*, 10 B. & Cr. 477. See sect. 54.

3. In an action by the plaintiff for a declaration that the defendants, his bankers, were not entitled to debit him with the amount of certain forged bills of exchange accepted by him, it appeared that V., a foreign correspondent of the plaintiff, was in the habit of drawing upon him, sometimes making the bills payable to the order of C. P. & Co., another foreign firm, and that a clerk in the plaintiff's employment forged the signature of V. to the order of C. P. & Co., and resembling the genuine bills which V. was in the habit of drawing on the plaintiff, and that he placed among the plaintiff's correspondence counterfeit letters of advice with respect to these forged bills, resembling the letters of advice ordinarily received from V. By these means the clerk procured the genuine acceptances of the plaintiff which he had forged. He then forged upon the bills indorsements purporting to be those of C. P. & Co., the payees named therein, and was paid by the cashier of the defendants across the counter the amounts for which the bills were drawn. Before payment of the bills the defendants were advised by the plaintiff in the ordinary course of business that the bills were coming forward for payment. Held (Lord Esher, M. R., dissenting), that the defendants were not protected by s. 7, sub. s. 3, of the "Bills of Exchange Act, 1882;" that C. P. & Co. were not "fictitious or non-existing" payees within the meaning of the sub. s.; that "fictitious" meant fictitious to the

§ 24.

knowledge of the party sought to be charged upon a bill; and that the defendants were not entitled to debit the plaintiff with the amount of the forged bills paid as above mentioned. Held, further, by the whole court, that the plaintiff had not been guilty of negligence immediately connected with the transactions so as to disentitle him to recover. *Vagliano v. Bank of England*, 23 Q. B. D. 243; 58 L. J. Q. B. 357; 61 L. T. 419; 37 W. R. 640; 53 J. P. 564 C. A. affirming 22 Q. B. D. 103; 58 L. J. Q. B. 27; 59 L. T. 864.

4. The defendant Farnsworth was sued as maker of two promissory notes which purported to have been made by Farnsworth and indorsed by one Graves, who was joined as co-defendant. At the trial defendant swore that he had neither signed the notes in question nor authorized any one to sign them for him. This fact was admitted and was found in his favour, but it appeared that previous to the trial, when payment of the notes was demanded, Farnsworth stated that he had signed the notes for the accommodation of his co-defendant Graves and made an offer of payment provided time was given, and that in consequence of the admission plaintiff refrained from taking proceedings against Graves for forgery;

Held, that defendant's (Farnsworth's) conduct amounted to an adoption and ratification of the signatures to the notes, and that he was liable thereon.

Per Weatherbe, J., that the case on the point of detriment or alteration of position came within the cases of *Fitzrandolph v. Shanly* et al., 2 R. & G. 199, and *Knights v. Whiffen*, L. R., 5 Q. B. 660, and that on this point the plaintiff was entitled to judgment. *The Union Bank v. Farnsworth* et al., 7 R. & G. 82; 7 C. L. T. 141; see also *Pratt v. Drake*, U. C. Q. B. 523; *Peck v. Thipon*, U. C. 9 Q. B. 523. See *infra*, n. 6.

5. After the making of a promissory note, it was altered by the maker as to the time of payment, without the consent of the indorser, who, however, but without knowledge of the alteration, promised to pay it:—Held, in an action against the indorser, that the alteration having been made without his authority rendered the note void, and that no subsequent promise by him to pay could have the effect of ratifying it. Held, also, that without *actual* knowledge of the alteration the promise to pay amounted to nothing, the means of knowledge alone being insufficient. *Westloh v. Brown*, U. C. 43 Q. B. 402.

6. A forgery cannot be ratified, but the acceptor may be estopped from setting up the forgery of his signature by his own admission and similar acceptances. *Brook v. Hook*, L. R., 6 Ex. 89; *Lench v. Buchanan*, 4 Esp. 226.

7. So, too, an admission of an indorsement may estop one from alleging it to be a forgery. *Cooper v. Le Blanc*, Stra. 1051; *Beeman v. Peck*, 11 M. & W. 251; *Meacher v. Fort*, 3 Hill 227; *Hortsmann v. Henshaw*, 11 How. 177. See section 55.

8. The holder of a bill, upon which the payee's indorsement is forged, cannot recover from the acceptor, whose engagement is to pay according to the tenor of the bill, to the payee himself, or his genuine order. *McCall v. Corning*, 3 La. An. 409.

9. The indorser is not entitled to rely on the ground of error or fraud, because the previous indorsement is a forgery committed by the maker, unless he show that such error was caused by the plaintiff, or that he participated in the fraud. *Olivier v. Andry*, 7 L. 498.

10. The right to Leverich

11. W. possess ignorant acceptor, sion unde was made must be lies the p

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10. The acceptor who has paid in error to a holder who had no right to receive, may recover back the amount thus paid. *Dick v. Leverich*, 11 L. 576.

11. Where a bill is assignable by indorsement, one who obtains possession of it by a forged indorsement acquires no interest, though ignorant of the forgery; and the original holder may recover of the acceptor, though the latter have paid the bill to the person in possession under such indorsement, unless it be shown that such payment was made through the fault of the original holder; but the fault must be shown, and the burden of proof is upon the party who justifies the payment. *Jackson v. Commercial Bank*, 2 R. 138.

12. Where one purchases a check after it had been forged, and by indorsing gives credit to it, and it is afterwards paid on presentment, he will be liable to the party paying it. *Merchants Bank v. Exchange Bank*, 16 L. 457.

13. Where a depository of money to be drawn upon checks or orders pays a forged check, he will be liable for the amount with legal interest from judicial demand. *Laborde v. Consolidated Association*, 4 R. 190; *Etting v. Commercial Bank*, 7 R. 459.

13a. A writes his name on a sheet of paper for the purpose of franking a letter, or in a lady's album, or on the fly-leaf of a book, and subsequently a bill regular and complete on its face is written on the other side of the paper and transferred to a holder in due course. A. will not be liable, as the fraudulent misapplication of the signature would amount to a forgery. *Foster v. Mackim* 4 R. 4 C. P. 704; *Tiedeman*, § 284.

Chalmers, p. 64, has the following illustrations:—

14. A bill is payable to the order of John Smith; another person of the same name gets hold of it, and indorses it to D., who takes it as a holder in due course. D. acquires no title to the bill, he cannot enforce payment against any party thereto. *Mead v. Young* (1790), T. R. 28; and should any party pay him, the payment is invalid. *Graves v. American Bank* (1858), 17 New York R. 205; Cf. *Ogden v. Benas* (1874), L. R., 9 C. P. 513.

15. A note payable to order is stolen from the payee. The thief forges the payee's indorsement, and collects the note from the maker's banker, who returns the note to the maker. The payee can recover the amount of the note from the maker in an action for conversion of the note. *Johnson v. Windle* (1836), 3 Bing. N. C. 225. See section 21, n. 5 and following.

16. A bill is payable to C.'s order. His indorsement is forged. D., a subsequent holder, presents the bill for acceptance. The drawee accepts it payable at his bankers'. The bankers pay D. They cannot debit the acceptor with this payment. *Roberts v. Tucker* (1851), 16 Q. B. 560, Ex. Ch. See *supra*, n. 3.

17. A bill is payable to the order of a firm. X., one of the partners, fraudulently indorses it in the firm name to D. in payment of a private debt. The acceptor pays D. X. becomes bankrupt. X.'s co-partner and trustee can recover from D. the money so received on the bill. *Heilbut v. Nevil* (1870), L. R., 5 C. P. 478, Ex. Ch.

18. C. specially indorses a bill to D. It is stolen before delivery to D., and D.'s indorsement in blank is forged on it. It comes into X.'s hands, and he gets his bankers to present it for payment. They receive payment, and credit X. with the amount. X. subsequently draws out the whole sum. C. can recover the amount of the bill

§ 25. from the bankers. *Arnold v. Cheque Bank* (1876), 1 C. P. D. 578; *Cf. Charles v. Blackwell* (1877), 2 C. P. D. at p. 157.

19. Note for £100. X forges B's signature to it as maker. Before the note matures the holder finds out that B's signature is a forgery and threatens to prosecute X. In order to prevent this, B. gives the holder a memorandum, which says, "I hold myself responsible for the note for £100, bearing my signature." The ratification is invalid. B. is not liable on the note. *Brook v. Hook* (1871), L. R. 6 Ex. 89; *Ex parte Edwards* (1841), 2 Mon. D. & D. 241; and *cf. Williams v. Bayley* (1866), L. R. 1 H. L. 200, at p. 221.

20. A. draws a bill payable to C's order. As between A. and C. the consideration is fraudulent. X. forges C's indorsement, and negotiates the bill to D., who takes it in good faith. D. finds out that C's indorsement has been forged, and after the bill is due he obtains a genuine indorsement from C., giving him half the value of the bill. D. cannot sue A. *Esdaile v. La Nauze* (1835), 1 Y. & C. 394.

21. B's acceptance to a bill is forged. A holder who takes it *bonâ fide* is afterwards informed that the signature is not B's, and accordingly writes to enquire. B. writes to say the signature is his. B. is liable on this acceptance. *Brook v. Hook*, L. R., 6 Ex. 100; *Roberts v. Tucker*, 16 Q. B. 577.

22. The acceptor of a bill forges A's name thereon as drawer, then discounts it with a bank. The bill is dishonored, and notice sent to A. The acceptor gets the bill renewed for a smaller sum, paying the difference in cash to the bank, and on the renewal again forges A's name as drawer. The renewed bill is dishonored, and notice sent to A. A. does not repudiate the transaction for fourteen days. He is not estopped from setting up that his signature was forged. *McKenzie v. British Linen Co.* (1881), 6 App. Cas., 82, H. L.

23. X. forges B's acceptance. B. pays the holder. Afterwards X. again forges B's acceptance which, unknown to B., gets into the hands of the same holder. B. may set up that his signature was forged. *Morris v. Bethell* (1869), L. R., 5 C. P. 47.

Procurator
signatures.

25. A signature by procurator operates as notice that the agent has but a limited authority to sign, and the principal is bound by such signature only, if the agent in so signing was acting within the actual limits of his authority.

Person sign-
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pacity.

26. Where a person signs a bill as drawer, indorser or acceptor, and adds words to his signature indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him

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as an agent, or as filling a representative character, does not exempt him from personal liability; § 26.

(2) In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favorable to the validity of the instrument shall be adopted.

Rule for determination of signature.

See sections 17, 22, 23 and 31.

Agents:—

1. A note signed "A. and Co., by B.," who is not a partner *primâ facie*, imports that B. signs the note for the firm and not as one of the firm. *Dowling v. Eastwood*, U. C., 3 Q. B. 376.

2. Married women and minors may be agents for others. Thus, if a man makes a note payable to his wife, or order, he thereby gives her authority to endorse it as agent, and her endorsee will have a right to recover against the husband, the maker of the note. *Melver v. Dennison*, U. C. 18, Q. B. 615. See also *Cooper v. Blacklock* and *Blacklock*, 5 A. R. 535; *Norris v. Condon*, 15 Q. L. R. 184; *Johnston v. Scott*, 3 L. N. 171. See section 22, n. 19a.

3. A note payable to A., "or to his wife and to no other person," is the same as if made payable to A. alone. *Moodie v. Rowatt*, U. C., 14 Q. B. 273.

4. Where an agent indorses, the principal cannot be held liable on the bill as an indorser where his name does not appear in any shape upon it. *Ross v. Codd*, U. C., 7 Q. B. 64.

5. A general power of attorney to an agent to sign bills, notes, etc., and to superintend, manage and direct all the affairs of the principal, gives him a power to endorse. *Auldjo v. McDougall*, 3 O. S. 199. But see *Tiedeman*, § 77.

6. In an action on a bill of exchange expressed to be accepted *per procuration* by the defendant's clerk, evidence was given of a conversation with the defendant, in which he stated that A. ought to pay it because it was drawn for his benefit. Held sufficient proof to leave to the jury of a recognition of the clerk's authority to accept. *Morrison v. Spurr*, N. B. 3, A. 288.

When agents or officers are personally liable:—

The following agents or representatives were held personally liable for want of contracting in the name of their principals:—

7. Indorsing by mistake in his own name when intending to sign as the attorney of another. *Seymour v. Wright*, 3 L. C. R. 454; *Leadbitter v. Farrow*, 5 M. S. 395; *Sowerley v. Butcher*, 2 C. M. 368.

8. Signing "pour le compte de" or "on account of B." *Newton v. Allen*, 2 R. D. L. 29, *ibid.* 30; 1 Bédarride, 529.

9. Signing "M. C. Bros., Agts." *Reid v. McChesney*, U. C., 8 C. P. 50; *Bartlett v. Hawley*, 120 Mass. 92; *Bank v. Cook*, 38 Ohio 442; *Williams v. Robbins*, 16 Gray 77. *Quere*, if the principal be disclosed or known. *Milligan v. Lyle*, 24 La. An. 144, 9 Barb. 528; *Rathbon v.*

§ 26. Budlong, 15 Johns. 1; Conroo v. Port Henry Iron Co., 12 Barb. 27. See specially *Armour v. Gates*, U. C., 8 C. P. 548; *Arnold v. Spragne*, 34 Vt. 402; *Bedford Ins. Co. v. Covell*, 8 Met. 444; 1 *Randolph*, 179, 822.

10. Drawing a bill "J. J. Johnson, commissioner," without stating the name of his corporation. *N. B.*, 4 A. 561; *Mellen v. Moore*, 65 Maine 390; *Sturdivant v. Hull*, 59 *ibid.* 172; *Town v. Rice*, 122 Mass. 67.

11. Indorsing by president and a secretary of a company not incorporated at the time of indorsement. *Jardine v. Rowley*, 3 R. & G. 244. See *infra*, n. 34.

11a. In signing as parish judge. *Paillette v. Carr*, 3 Martin 496.

12. By merely naming or describing the principal, either in the body of the instrument or in the signature after the name or signature of the agent or official, *v. g.*, "We, the Trustees of the Methodist Episcopal Church of A., promise," and signed A. B. C. or, "I, J. F., president of the Mechanics' Insurance Company, promise," signed J. F.; or, "We, the Trustees of the Presbyterian Church, promise," signed merely "A. B. C., trustees." *Hypes v. Griffin*, 89 Ill. 134; *Packard v. Hye*, 2 Metc. 47; *Fogg v. Virgin*, 19 Me. 352; *Barker v. Mechanics' Ins. Co.*, 3 Wend. 94; *Mick v. Frevett*, 20 Me. 462; *Powers v. Briggs*, 9 Ill. 493; *Seaver v. Colburn*, 10 Cush. 324; 1 *Randolph*, 191. *Byles*, 14th ed. 83. See *infra*, n. 36. See also notes.

13. Therefore, where money is lent to the X. Company, a note for the amount is given in this form, "We promise to pay, *et cetera*," signed,

"J. B., }
"J. S., } Directors of the X. Company, Limited.
"J. T., Manager."

The persons who sign are personally liable as makers. *Courtland v. Sanders*, 16 L. T. N. S. 562; *Dutton v. Marsh*, L. R. 6 Q. B. 361; *Gray v. Raper*, L. R. 1 C. P. 694; *Chalmers*, 37 and 69.

14. Likewise where a bill was drawn upon P. C. de Latre, Esq., president Niagara Dock and Harbor Company, Niagara, C. W.; and was thus accepted; "Accepted, P. C. de Latre, president N. H. & D. Co." Held that de Latre was personally liable. *Bank of Montreal v. de Latre*, U. C. Q. B. 362. See also *Rew v. Petet*, 1 Ad. & El. 196; *Madden v. Cox*, 5 A. R. 473; *Brown v. Howland*, O. R., 9 C. P. D. 48; *Bank of Hamilton v. Harvey*, *ibid.* 655; *Tucker Mfg. Co. v. Fairbanks*, 98 Mass. 101; *Brockway v. Allen*, 17 Wend. 40; 1 *Randolph* 194. But see *Walker v. Bank of the State of N. Y.*, 9 N. Y. 582; *Mann v. Chandler*, 9 Mass. 335; *City Bank v. Cheney*, U. C., 15 Q. B. 400.

15. G., being the secretary of an insurance company, gave this note for a loss:—"£1000 currency.—Sixty days after date I promise to pay to the order of W. £1000, value received by the Ontario Marine and Fire Insurance Company, payable at the Gore Bank in Hamilton." Signed, "C. Horatio Gates, Secretary O. M. and F. Company." Held, that he was personally liable thereon. *Armour v. Gates*, U. C., 8 C. P. 548.

16. "§875. To the Beaver and Toronto Fire Insurance Company, Toronto, November 6, 1876. Three months after date pay to the order of John Hagarty, at the Ontario Bank here. §875, being payment in full of his claim under policy No. 71,514, for loss and damage by fire on the 27th of October last. (Signed,) A. Squier, Inspec-

tor." *Squier*, Q. B. 165.

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19. Likew bill drawn u way and Ca W. I. R. & des, U. C., see Hood v. 250; Aggo 32 Ind. 87.

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Executors, 23. An exec negotiable in and is duly au 25; Childs v. 9; Liverpool Pet. 532; Ru

tor." Squier is personally liable. *Hagarty v. Squier*, U. C., 42 Q. B. 165.

17. A bill is addressed to "J. B., general agent of the X. company." He accepts, "Accepted on behalf of the Company, J. B." J. B. is personally liable as acceptor. *Herald v. Connale*, 34 L. T. N. S. 885.

18. Again, accepting a bill drawn on "M. H. Taylor, treasurer C. S. Ry. Co., St. Thomas," in the name of "M. H. Taylor, Tr." *Lang v. Taylor*, U. C., 26 C. P. 416.

19. Likewise the acceptor is personally liable in accepting a bill drawn upon "W. A. Geddes, treasurer of the Wolfe Island Railway and Canal Co.," by writing, "Accepted, W. A. Geddes, treas. W. I. R. & C. Co.," and adding the company's seal. *Foster v. Geddes*, U. C., 14 Q. B. 239; *Dutton v. Marsh*, L. R., 6 Q. B. 361. But see *Hood v. Hallenbeck*, 7 Hun. 362; *Pitman v. Kintner*, 5 Blackf. 250; *Aggo v. Nicholson*, 25 L. J. Ex. 348; *Means v. Swormsted*; 32 Ind. 87. See sec. 90.

20. A bill was drawn by "W. Lynn Smart, secretary of the N. & D. Rs. Ry. Co.," on the president of the company: "To George Macbeth, Esq., president, London, C. W.," and the bill was accepted as follows: "Accepted, George Macbeth, president." Held that both the president and secretary were personally liable, the company being authorized by its charter to draw or accept bills by its president, or vice-president, counter-signed by the secretary. *Bank of Montreal v. Smart*, U. C., 10 C. P. 15.

21. A company was registered by the title of "The South Shields 'Salt Water Baths Company (Limited).'" The plaintiffs drew the following bill of exchange: "Six months after date pay to our order the sum of £125 for value received. Salt Water Bath Company (Limited), South Shields," which was accepted as follows: "Accepted payable Messrs. Hodgkin, Barnett & Co.'s Bank, So. Shields. J. P. W., Chairman, T. S. B. & J. S. B., Directors, South Shields Salt Water Baths Co." An action having been brought upon the bill by the plaintiffs against the chairman and directors, Held, that the two variations from the proper designation of the company were sufficient to bring the defendants within the provisions of s. 42 of the Companies Act, 1862, the intention of which was to insure extreme strictness in regard to the use of the registered name of the company, not only in enforcing the use of the word "Limited," but in all other respects, and that the plaintiffs were entitled to judgment. *Atkins v. Wardle*, 58 L. J. Q. B. 377; 61 L. T. 23. Sect. 17, p. 3, sect. 23, and Appendix. See notes.

22. *Quere* as to bills signed by officers but made on paper stamped, or otherwise marked, with the company's name, or dated at the company's office. *Mechanics Bank v. Bank of Columbia*, 5 Wheat. 326; *Caldwell v. National Mohawk Valley Bank*, 64 Barb. 333; *Van Leeuwen v. First National Bank of Kingston*, 54 N. Y. 671; 6 Lans. 378; *Carpenter v. Fansworth*, 106 Mass. 561; *Hitchcock v. Buchanan*, 15 Otto. 416. See "The Bank Act" Ca. 53 Vict., ch. 31, ss. 58, 59.

Executors, Trustees:—

23. An executor, or the agent of an executor, is personally liable on negotiable instruments, unless he clearly describes himself as such, and is duly authorized to do so. *Gore Bank v. Crooks*, U. C., 26 Q. B. 25; *Childs v. Monins*, 2 B. & B. 460; *Serle v. Waterworth*, 4 M. & W. 9; *Liverpool Bank v. Walker*, 4 De G. & J. 24; *Peter v. Beverly*, 10. Pet. 532; *Russell v. Carle*, 2 Louis. 188; *Bank of Louisiana v. Dejean*,

§ 26.

12 Robinson 16; *Gillet v. Rachal*, 9 id. 276; *Flower v. Swift*, 5 Martin N. S. 530. And the holder is not bound to wait for payment in the ordinary course of administration, for instance for an inventory. *Hestres v. Petrovie*, 1 Robinson, 119; *Byles*, 14th ed. 65.

24. "The trustees to the estate of C. D. Edwards," under a deed of composition which gave them no power to draw or accept bills, are personally liable. *Archibald v. Brown*, 24 L. C. J. 85.

25. Signing "executrix and executors of E. B. P., deceased," renders the makers personally liable. *Kerr v. Parsons*, U. C., 11 C. P. 513. See notes.

26. Plaintiff sued on a promissory note made payable to N. M., or order, and, after his decease, indorsed to plaintiff by one of N. M.'s executors, and not by all of them. Held, that the indorsement was sufficient. *Almon v. Cock*, 2 Thom. 265. In Quebec see Civil Code, art 913.

27. D., the holder of a bill payable to his order, dies. X., his executor, indorses the bill away, signing the indorsement, "J. X., executor of D." X. is personally liable on this indorsement, unless he adds some such words as "without recourse against me personally." *Childs v. Monins*, 2 Brod. & B. 460.

28. The widow of an indorsee deceased intestate, who is not administering the estate, cannot indorse the note even to pay funeral expenses and other debts of the indorsee. *Gerow v. Holt*, 24 N. B. R. 412.

When agents and officers are not personally liable:—

The agent has been held not to be personally responsible in the following cases:—

29. When acting within the scope of his power of attorney and contracting in the name of his principal. *Ethier v. Thomas*, 15 L. C. J. 225; *Joseph v. Hutton*, 9 L. C. R. 299.

30. But the agent must remain within the purposes of his procura-tion. *Gore Bank v. Crooks*, U. C., 26 Q. B. 251.

31. The authority of an agent specially authorized to draw a bill of exchange for a particular purpose ceases on the acceptance, and if the drawer is discharged by want of notice of dishonor, the agent cannot, without further express authority, revive the liability by agreeing to waive the legal discharge. *McGhie v. Gilbert*, N. B., 1 A. 235.

32. Authority will be presumed, when the agent is in the habit of signing to the knowledge of the principal. *Lee v. McDonald*, 6 O. S. 130.

33. A company was authorized to make notes by and through its president acting upon a resolution of the directors. The directors had not been appointed as required by the charter. Held, that authority would be presumed, and that the note so signed by the president was good in the hands of a holder in good faith who had given value to the company. *Currier v. Ottawa Gas Co.*, U. C., 18 C. P. 202. See also *Corporation of Grantham v. Couture*, 24 L. C. J. 105, 2 L. N. 350.

34. The president and secretary of an incorporated club are not personally liable for the notes they have signed in the name of the club, although the latter was not authorized by its charter to issue notes. *Bank of Ottawa v. Harrington*, U. C., 28 C. P. 488.

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37. In an action against defendant as acceptor on the following bill of exchange: "\$800, Montreal, Feb. 19, 1869. Two months after date pay to the order of myself at the Jacques Cartier Bank in Montreal, eight hundred dollars, value received, and charge the same to account of E. E. Gilbert—James Glass, secretary Richardson Gold Mining Company, Belleville, Ontario." Held, on demurrer, not to be the acceptance of defendant, and that he was not personally liable. *Robertson v. Glass*, U. C., 20 C. P. 250. See also *Corporation of Toronto v. McBride*, U. C., 29 Q. B. 48; *Merritt v. Maxwell*, U. C., 14 Q. B. 500.

§ 26.

36. A bill is addressed to the "B. Company, Limited." Two of the directors accept it, signing, "J. S. and H. T., directors of the B. Co., Limited." This is an acceptance by the company. *O'Kell v. Charles*, 34 L. T. N. S. 822. See *supra*, n. 12 and following.

37. Money is lent to the X. Railway Company. A note for the amount is given in this form, "I promise to pay, *et cet.*" (signed) "For the X. Railway Co. J. B., Secretary." J. B. is not personally liable. *Alexander v. Sizen*, L. R., 4 Ex. 102. But see *Gray v. Raper*, L. R., 1 C. P. 694.

38. A promise to pay in the full and true name of the principal binds the latter only; *v. g.*, "The Newport Manufacturing Company promises," etc., is the note of the corporation, and does not render the agent or officer personally responsible, although he has signed merely as "agent" or "treasurer" or "trustee" or "president." *Jefts v. York*, 1 Cush. 371; 10 *ibid.* 392; *Commercial Bank v. Newport Mfg. Co.*, 1 B. Mon. 13; *Moor v. Wilson*, 26 N. H. 332; *Whitney v. Stow*, 111 Mass. 368; *Armstrong v. Kirkpatrick*, 79 Ind. 527; *Johnson School Township v. Citizens Bank*, 81 Ind. 515. See *supra*, nn. 28, 12 to 23.

39. A public officer of any State or municipal department, signing in his public capacity to the knowledge of the other contracting party, is not personally liable, although he does not give his official designation. *Macbeth v. Haldimand*, 1 T. R. 172; *Myrtle v. Beaver*, East 135; *Allen v. Woldgrave*, 2 Moore 627; 1 *Randolph*, § 132.

Agencies are created either by express or implied authority. Agents. Verbal authority to sign a commercial paper for another is sufficient; but if a written authority be given, the terms of the agency are governed by the written authority.

No authority will be implied from an express authority, unless it is absolutely necessary to the exercise of the express authority.

Authority to execute and negotiate bills and notes in the name of the principal will be implied from the appointment to a particular clerkship or office, where the customary duties are to execute and negotiate bills in the name of the principal.

Where a principal has repeatedly recognized or ratified the act of the agent by payment of bills or notes, or in any other way, an implied authority will be presumed, or, at least, the

§ 26. principal will be estopped in the future from denying the authority of the agent.

Special instructions limiting the authority of the agent will not avail as against third persons dealing with him in good faith and without notice.

Where the agent signs "per procuration," notice is given to all subsequent holders that the agent is acting under special or written instructions, and the holder who fails to make proper inquiries, in order to ascertain the extent of his powers, acts at his peril. *Attwood v. Mannings*, 7 B. & Ad. 114; *Chalmers*, 68.

Tiedeman, § 82, says:—"If an agent is authorized to make notes, or draw and accept bills of exchange, or indorse commercial paper generally, in the name of his principal, it is presumed that he can only do these things in behalf of his principal's interests; and if he should apply these notes and bills to his own use, with the knowledge of the payees and indorsees, the notes and bills will be void, and cannot be enforced against the principal. Nor can an agent, having the authority to sign his principal's name to commercial paper, exercise his power for the accommodation of a third person, unless he is expressly authorized to do so, or unless by previous acquiescence in such transactions the principal is estopped from denying the want of authority of his agent. The fact, that the paper was issued by the agent without authority, for the accommodation of himself or of a third person, will not avoid the paper in the hands of a *bona fide* holder. But if an agent should in his own name draw a bill on his principal, and indorse it in his principal's name "per agent," it would be notice to all parties, into whose hands the bill may come, that it is an accommodation paper, and therefore not binding upon the principal, unless expressly authorized."

Procuration
Signatures.

But how is an agent to sign in order to avoid personal responsibility, and bind the principal? From the variety of decisions quoted above, under section 26, it would seem almost a puzzle. It is indeed often difficult to determine when a signature is the signature of the principal by an agent, or the signature of an agent naming or describing a principal. In signing, great care should therefore be observed by the agent to avoid words merely describing him as an agent or as filling a representative position; otherwise under numerous decisions sanctioned by section 26 of

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the Act, he would be personally liable. He should sign for and on behalf of his principal, or in a representative character, or, as Lord Ellenborough says, he should subscribe the bill "for another or by procuration of another," which are words of exclusion. Unless he says plainly, "I am the mere scribe," he is liable. The truly correct form of signature is "A. by B." or "per pro, B."

§ 26

It is now very generally admitted that it is sufficient to sign "B. for A." or "for A.B." ;

"A. by B., agent or cashier," etc., as the case may be. See Chalmers, 68; Tiedeman, § 85.

Too much precision cannot be observed in writing out the name of the principal without any abbreviation, especially in the case of a corporation, although a misspelling may be corrected as in ordinary cases. See sections 6, 7, 23 and 32. By section 79 of the Canada Companies Act, c. 119, the signature of a company, incorporated by letters patent, must be the name of the company, followed by the word "limited"; otherwise the manager and directors will be personally responsible for the amount of the bill, and be further liable to heavy penalties. By section 76, bills, notes and cheques must be signed in the name of the company, by its agents or officers in the ordinary exercise of their powers conferred upon them under the by-laws of the company; otherwise the company is not liable, and the agent or officer is personally responsible. See also Companies Clauses Act, c. 118, §§ 35 and 39. The seal of a corporation is equivalent to a signature. Sect. 90 of the Bills of Exchange Act.

When a person is under obligation to indorse a bill in a representative capacity, *v. g.*, as executor, trustee, liquidator, etc., it is prudent and perhaps necessary to use such words as to negative personal liability. Sect. 31.

Bills or notes of a bank must be signed by the president, vice-president, cashier or other person appointed by the directors. Bank Act, s. 58. The directors may, however, from time to time, authorize or depute any cashier, assistant cashier or officer of the bank, or any director other than the president or vice-president, or any cashier, manager or local director of any branch or office of discount and deposit of the bank, to sign the notes of the bank intended for circulation.

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Section 59 says:—"All bank notes and bills of the bank, whereon the name of any person intrusted or authorized to sign such notes or bills on behalf of the bank is impressed by machinery provided for that purpose, by or with the authority of the bank, shall be good and valid to all intents and purposes as if such notes and bills had been subscribed in the proper handwriting of the person intrusted or authorized by the bank to sign the same respectively, and shall be bank notes and bills within the meaning of all laws and statutes whatever, and may be described as bank notes or bills in all indictments and civil or criminal proceedings whatsoever; provided always, that at least one signature to each note or bill must be in the actual handwriting of a person authorized to sign such note or bill."

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§ 27.*The Consideration for a Bill.*

27. Valuable consideration for a bill may be constituted by:—

Valuable consideration; how constituted.

(a) Any consideration sufficient to support a simple contract;

(b) An antecedent debt or liability; such a debt or liability is deemed valuable consideration, whether the bill is payable on demand or at a future time;

(2) Where value has at any time been given for a bill, the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time;

When holder is holder for value.

(3) Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.

As to lien.

See sections 29, 30, 38, 53 and notes under section 38.

Partial failure of consideration:—

1. A partial failure of consideration has been held to be no defence in several Canadian cases. The remedy was by cross-action. *Spelman v. Robidoux*, 1 R. C. 241; *Hall v. Coleman*, 3 O. S. 39; *Dalton v. Lake*, 4 O. S. 15; *Dixon v. Paul*, 4 O. S. 327; *Thompson v. Farr*, U. C., 6 Q. B. 387; *Hill v. Ryan*, U. C., 1 Q. B. 445; *Henderson v. Colter*, U. C., 15 Q. B. 345; *Georgian Bay Lumber Co. v. Thompson*, U. C., 35 Q. B. 64; *Brown v. Garrett*, U. C., 5 Q. B. 423; *Kilroy v. Simkins*, U. C., 26 C. P. 281; *Orser v. Mourteny*, U. C., 9 Q. B. 282; *Colter v. Lee*, U. C., 5 C. P. 201; *Walker v. Douglass*, U. C., 2 Q. B. 9; *Whitman v. Parker*, 6 R. & G. 155; 6 L. T. 448; *Brundige v. Delany*, 2 N. S. D. 62; *Hill v. McLeod*, 5 R. & G. 250; *Clarke v. Ash*, 3 Kerr 211; *Greenleaf v. Cook*, 2 Wheaton 13; *Righter v. Aleman*, 4 Robinson, sec. 45.

2. The rule seems to be now well settled as well in Canada as in England and the United States, that a partial failure of consideration is a

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good defence *pro tanto* against an immediate party, when the failure is for an ascertained and liquidated amount. *Barber v. Morton*, 7 A. R. 114; *O'Donohue v. Swain*, 4 Ma. R. 476; *Kellogg v. Wyatt*, U. C., 1 Q. B. 445; *Star Kidney Pad Co. v. Greenwood*, O. R., 5 Q. B. D. 28; *Rennie v. Jarvis*, U. C., 6 Q. B. 329; *O'Brien v. Ficht*, U. C., 18 Q. B. 241; *McGregor v. Bishop*, 14 O. R. 7; *Fisher v. Archibald*, 2 N. S. D. 298; *Smith v. McEachren*, 3 N. S. D. 35 and 279; *Strathy v. Nichols*, U. C., 1 Q. B. 32; *Ex parte Newton*, 16 Ch. D. 330; *Darnell v. Williams*, 2 Stark 166; *Agra Bank v. Leighton*, L. R., 2 Ex. 64; *Chapel v. Hickes*, 2 Cr. & M. 214; *Farnsworth v. Garrard*, 1 Campb. 38; *Harrington v. Stratton*, 22 Pick. 510; *Mixer v. Coburn*, 11 Mat. 559; *Spalding v. Vandercook*, 2 Wend. 431; *Byrne v. Grayson*, 15 An. 457; *Sandidge v. Sanderson*, 21 An. 757, 771; *Tissot v. Bowles*, 18 Lous. 29; *Billing v. Southee*, 10 E. L. & E. R. 37; *Girouard, Lettres de Change*, 70.

Total failure of consideration :—

3. A mere moral obligation does not constitute value. *Baker v. Read*, 1 N. S. D. 199; *Southall v. Rigg*, 11 C. B. 481.

4. Future services to be rendered by an attorney-at-law are not sufficient consideration. *Robertson v. Caldwell*, U. C., 31 Q. B. 402; *Hope v. Caldwell*, U. C., 21 C. P. 241. It seems that a note given as a retainer could be valid. See *Tiedeman*, § 173; 2 *Randolph*, § 482.

5. A voluntary gift or gratuity, or *donatio mortis causa*, is not valuable consideration. *Thomas v. McLeod*, 1 Han. 588; *McCarrroll v. Reardon*, N. B., 4 A. 261; *Hill v. Wilson*, L. R., 8 Ch. 894; *Holliday v. Atkinson*, 5 D. & C. 501; *Milnes v. Dawson*, 5 Exch. 948; *Tate v. Hilbert*, 4 Bro. C. C. 286; *Barrière v. Gladding*, 17 Louis. 144.

6. But in Quebec it has been held that cheques signed during the last illness of the donor, and delivered "as parting gifts," were valid, and could be recovered after his death out of his estate. *Colville v. Flanagan*, 8 L. C. J. 225; 14 L. C. R. 328. See also *Voyer v. Richer*, P. C., 5 App. Cas. 461; 5 R. L. 591. In France, *bons offices* or services rendered, or a donation *inter vivos* or *mortis causa* are valuable consideration. Cass. 13 Vent. An. XII; Cass. 12th Dec., 1815, 25th January, 1832, 21st August, 1837; J. P. 37, 2, 218. Likewise in Louisiana, *Burke v. Bishop*, 27 An. 465; *Tiedeman*, § 160.

7. In England the contrary has been held in *Hewitt v. Kaye*, L. R., 6 Eq. 198; *Beak v. Beak*, L. R., 13 Eq., 489; *Jones v. Lock*, L. R., 1 Ch. 25, where it was decided that the cheque although valid as a *donatio mortis causa*, must be presented for payment by the donee before the drawer's death. But in a still more recent case the doctrine laid down in *Colville v. Flanagan* was maintained. *Bromley v. Brunton* (1865), L. R., 6 Eq. 275. By section 74, sub-sect. (b), the cheque should be presented before the drawer's death. Byles, 14th ed. 201.

8. In England the holder of a bill may validly transfer the same by way of gift in contemplation of death; but his estate will not be liable as indorser, except to an indorsee for value and without notice. *Miller v. Miller*, 3 P. Wins. 356; *Veal v. Veal*, 27 Beav. 303; *Austin v. Mead*, 15 Ch. D. 651; *Tate v. Hilbert*, 4 Bro. C. C. 286; *Holliday v. Atkinson*, 5 B. & C. 503; *Rolls v. Pearce*, 5 Ch. D. 730; *Williams on Executors*, 7th ed. 778-780.

9. When A. & B. make their joint note on demand to plaintiffs, and at their request, for a debt due by B., there being no extension of time; Held, that there is no consideration. *Merchants Bank*, 8 P. R. 117.

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10. But in *Currie v. Misa*, L. R., 10 Ex. 153, 1 App. Cas. 554, it was decided in 1875, and has since been considered as a settled rule of law, that an antecedent debt constitutes a sufficient consideration for a bill whether payable on demand or *in futuro*. Settled by section 27, sub-sec. (b).

11. Where a note was given to a new firm in satisfaction of a guarantee given to the old firm (dissolved) for advances made by them, Held, no consideration. *Hénault v. Thomas*, 1 R. L. 706. Contra under section 27, sub. sect. (b). See *infra*, n. 24.

12. Likewise where a note was given to purchase stock which was never purchased. *Perry v. Rodden*, 5 R. L. 477; *Cridford v. Bulmer*, M. L. R., 4 Q. B. 293; *Cass*, 31st May, 1864, J. P. 1864, 699. See also *Brussels*, 23rd July, 1817; *Paris*, 13th February, 1847, J. P. 47, 1, 223.

13. When the value received was contingent "upon no claim being made to the logs," which were subsequently revendedicated, Held that there was no consideration. *Garnsley v. Chapman*, 13 L. C. R. 239.

14. Likewise, where a bill is given for a debt represented to be due, but not really due. *Southall v. Rigg*, 11 C. B. 481.

15. Or when a void note is given up. *Coward v. Hughes*, 1 K. & J. 443. See also *Mather v. Marchstone*, 18 C. B. 273.

16. A deed of land was made by a farmer to one of his sons, who, at the father's request, gave his promissory note to his father payable to his other brothers respectively, the arrangement being made for the purpose of distributing the estate of the father without a will. The notes were lodged by the father with another person. Held, that the payees could not recover on the notes, for want of consideration moving from them to the maker. *Forsyth v. Forsyth*, 1 R. & G. 380. *Quere* under section 27 (2). See *supra*, n. 11.

17. A note given to the assignee of C. by C's wife for debt due by her to C., before marriage, is invalid for want of consideration. *McDaniel v. McMillan*, 2 R. & G. 405.

18. The notes sued on were given in renewal of a previous note which was given in consideration of plaintiff retiring a bill of exchange on which the defendant was liable as drawer. Held, that if the plaintiffs could not recover on the notes, they could recover on the count for money paid, which was the original consideration. *Souther et al. v. Wallace et al.*, 20 N. S. R. (8 R. & G.), 509. Affirmed in appeal to the Supreme Court of Canada. 9 L. C. T. 210.

19. Where a note was given to plaintiff in part payment of purchase money of lands under an agreement for sale and purchase not reduced to writing. Held, that the evidence could not be given of the consideration, and that plaintiff could not recover the amount of the note. *Black v. Gesner et al.*, 2 Thom. 157; *Lindsay v. Zwicker*, 2 N. S. D. 100.

20. But where the consideration of a promissory note was the purchase of land of which the maker took possession, though there was no written agreement for the sale of the land, and the consideration was not expressed on the face of the note, the maker cannot set up as a defence the want of consideration. *Gray v. Whitman*, 2 Thom. 157.

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21. Action on a promissory note. Defence, no consideration. *W. & McC.* obtained a judgment against *S.*, and under an execution issued on this judgment and a prior execution, the Sheriff, in February, 1859, levied on the goods of *S.* and sold them at a great sacrifice. After satisfying the prior execution, there remained in the Sheriff's hands a balance of £60, which he did not pay over to *W. & McC.*, and it appeared that they never took any steps to compel him to do so. *S.* on several occasions attempted to get an account from the Sheriff, but failed. *S.* subsequently made several payments on the judgment debt. In September, 1864, *S.* was arrested at the instance of *W. & McC.*, and, to avoid going to jail, paid £70 in cash, and gave two notes, one of which was the note sued upon. The defence set up was, that the notes were without consideration, as if *S.* were credited with the balance in the Sheriff's hands, the judgment debt would be more than paid.

Held, that as through the negligence of the judgment creditors the remedy against the Sheriff had been lost, they, and not the debtor, must suffer the loss, and that therefore the note was without consideration. *Coleman v. Dunlap et al.*, 1 N. S. D. 216.

22. The Justices of York were empowered by Act 10 Vic., c. 7, to lease certain lands at auction, but that no lease should be made unless the rent should have been fixed by the Justices, or till the land should have been sold or offered for sale by auction. The right of the Justices was transferred to the corporation of Fredericton, who agreed to lease the land to *A.*, but no lease was executed, and *A.* died owing rent; the land was afterwards advertised at auction, but upon the sale, the defendant agreed to take a lease on the same terms that *A.* held the land, and pay the arrears of rent, for which he gave his note to the plaintiff. Held, that they had no authority to lease the land except by auction, and that the defendant was not liable on the note, *City of Fredericton v. Lucas*, N. B., 3 All. 583.

What is valuable consideration?—

The consideration has been held sufficient in the following cases:—

23. An exchange of negotiable paper. *Wood v. Shaw*, 3 L. C. J. 169; *Bull v. Cuvillier*, 5 L. C. J. 127; *Rose v. Sims*, 1 B. & Ad. 526; *Burdon v. Benton*, 9 Q. B. 843; *Hornblower v. Proud*, 2 B. & Ald. 327; *Ex parte Cama*, L. R., 9 Ch. 687.

24. A debt due to a third party. *Perry v. Milne*, 5 L. C. J. 121; *Dickenson v. Clemow*, U. C., 7 Q. B. 421. But see *McGillivray v. Keefer*, U. C., 4 Q. B. 363; *Street v. Quinton*, N. B., 2 P. & B. 567; *Balfour v. Sea Assn*, 3 C. B., N. S. 300; 27 L. J. C. P. 17. See section 27, *et seq.* (b).

25. A debt of one of the joint makers. *Spinney v. Matthews*, 20 N. S. R.; 1 G. 105.

26. A compromise of a disputed liability. *Cook v. Wright*, 30 L. J. Q. B. 321; *Tuttle v. Smith*, 3 Kerr, 643.

27. Any advantage conferred. *Dutton v. Lake*, 4 O. S. 15; *Lemieux v. Bourassa*, 1 Q. B. R. 305; *Fletcher v. Noble*, O. R., 8 C. P. D. 122; *N. B. Assur. Co. v. Ansley*, 2 Kerr 196. For instance the prospect of profits, although not realized. *Corkerry v. Boyle*, 8 Martin, N. S. 131.

27a. The building of a church and rectory. *Thomas v. Grace*, U. C., 15 C. P. 462.

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28. A promise to give up a bill thought to be invalid. *Smith v. Smith*, 13 C. B. N. S. 418.

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29. A debt barred by the Statute of Limitations. *Bank of Upper Canada v. Dartlett*, U. C., 12 C. P. 238; *Evans v. Morley*, U. C., 21 Q. B. 547; *Goodierham v. Hutcheson*, U. C., 5 C. P. 241; *Wright v. Wright*, 6 P. B. 295; *Canadian Bank of Commerce v. Gurley*, U. C., 30 C. P. 583; *Latouche v. Latouche*, 3 H. & C. 576; 34 L. J. Ex. 85.

30. A note given after discharge from arrest by plaintiff's consent is valid. *Hackman v. Zwicker*, Thom. 200.

31. Value arising at any time during the currency of a note is sufficient. *Blake v. Walsh*, U. C., 29 Q. B. 541.

Illegal consideration:—

32. Illegality of consideration, total or partial, is a good defence against an immediate party, but not against a holder in due course. *Hay v. Ayling*, 16 Q. B. 431, *Chalmers* 90; *Dorais v. Chalifoux*, 6 R. L. 325; *Commercial Bank v. Page*, Stev. Dig. 7; *Knox v. White*, 20 La. An. 326; *Hill v. Martin*, 12 Martin 183; *Sandidge v. Sander-son*, 21 La. An. 757.

32a. Contracts prohibited under a penalty are illegal and void. Endlich on Statutes, §§ 450 and 451.

33. The consideration for a bill is illegal when it is immoral, contrary to public policy, or forbidden by statute. *Fitch v. Jones*, 5 E. & B. 238; *Cole v. Cole*, 7 Martin, N. S. 423; *Chalmers*, 90.

The following have been held to be illegal considerations and to be a good defence against an immediate party, but not against a holder in due course:—

34. To procure a public office. *Blackford v. Preston*, 8 T. R. 93; *Balmer v. Bate*, 2 B. & B. 673, 678; *Richardson v. Mellish*, 2 Bing. 229.

35. Under threats of having son arrested. *Macfarlane v. Dewy*, 15 L. C. J. 85; *Doyle v. Carroll*, U. C., 28 C. P. 218.

36. To stifle a prosecution for a crime. *Bell v. Riddell*, O. R., 2 Q. B. D. 25; 10 A. R. 544; *Henry v. Little*, U. C., 11 Q. B. 296; *Toponce v. Martin*, U. C., 38 Q. B. 411, 2 Randolph 82. See also *Canada Farmers Mut. Ins. Co. v. Watson*, U. C., 25 C. P. 1; *Morgan v. Knox*, 15 An. 176; *Perry v. Frilot*, 6 Martin, N. S. 220; *Leggett v. Peet*, 1 Louis. 297.

37. Not to proceed in a prosecution for permitting unlawful gambling in a tavern. *Dwight v. Ellsworth*, U. C., 9 Q. B. 539.

38. The defendant C. being in prison in due course of law on a charge of assaulting the plaintiff, for which an indictment was laid against him charging him with an assault occasioning actual bodily harm, and with common assault, and a civil action for the assault having also been brought against him, a settlement was effected by defendant C. giving a note endorsed by defendant B., for \$1,000, for the damages sustained by plaintiff, which was held not to be disproportionate to the injury sustained, and a fine was inflicted for common assault merely, the former charge in the indictment being withdrawn. The settlement was made and the note accepted by plaintiff at defendant's instance, and under the sanction and advice of his counsel, without plaintiff having urged it or taken advantage of the imprisonment to procure it; and the judge, in sentencing defendant, forebore to imprison because defendant had made compensation to the plaintiff. To an action on the note, the defendant set up fraud, duress, and illegality of consideration. Held, that the plaintiff was entitled

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to recover; that there was no evidence of fraud; nor under the circumstances could there be deemed to be duress; and, further, that there was no illegality of consideration, for the settlement was merely for the plaintiff's private damage, and in no way affected the public interest, the law having been vindicated by the imposition of substantial punishment. *Kneeshaw v. Collier*, U. C., 30 C. P. 265. See also *Robertson v. Furness*, U. C., 43 Q. B. 143.

39. The consideration is also illegal as being against public policy, when to induce a creditor to sign a deed of discharge, or a deed of composition and discharge, in favor of an insolvent, in fraud of the other creditors. *Williard v. Killman*, 1 Kerr 105; *McCabmont v. Baillie*, N. B., 1 A. 573; *Blackwood v. Chinie*, 2 R. de L. 27; *Prévost v. Pickell*, 17 L. C. J. 114; *Sinclair v. Henderson*, 9 L. C. J. 306; *Doyle v. Prévost*, 17 L. C. J. 307; *McDonald v. Senez*, 21 L. C. J. 291; *Leclair v. Casgrain*, M. L. R., 3 S. C. 355; *Gervais v. Dubé*, M. L. R., 6 S. C. 91; *Decelles v. Bertrand*, 21 L. C. J. 291; *contra Greenshields v. Plamondon*, 10 L. C. R. 251; *Perrault v. Laurin*, 14 L. C. R. 85, 8 L. C. J. 196; *Martin v. Macfarlane*, 1 L. C. J. 55; *Bank of Montreal v. Audette*, 4 Q. L. R. 254. See also 2 Randolph, § 508; *Bytes*, 14th ed, 154, 161.

40. The indorsers of such composition notes are not liable. *Arpin v. Poulin*, 22 L. C. J. 331; *Martin v. Poulin*, 4 L. N. 20. But see *Reed v. Wiggins*, 13 C. B. N. S. 220, *Chalmers*, 91. See section 22 (2), n. 32.

41. If paid, the maker may recover the amount from the payee. *Gilmour v. Thompson*, 49 How. Pr. 200; *Bytes*, 14th ed; 156.

42. Such composition notes are valid in the hands of a *bonâ fide* holder for value. *Girouard v. Guindon*, 2 L. N. 270; *Gilmour v. Thompson*, 49 How. Pr. 200. See also *Gervais v. Dubé*, M. L. R., 3 S. C. 91; *Bytes*, 14th ed, 156.

43. A bet or wager, respecting the result of an election, is not a legal consideration for a note. *Dufresne v. Guévremont*, 5 L. C. J. 278. But it cannot be opposed against a *bonâ fide* holder for value. *Ladouceur v. Morasse*, 2 Q. L. D. 182. See *infra*, n. 57.

The following considerations are also illegal:—

44. Services as a lobbyist in procuring legislation. *Harris v. Roof*, 10 Barb. 489; *Marshall v. Baltimore*, and *O. R. R.*, 16 How. 314; *Thorne v. Yentz*, 4 Cal. 321.

45. To bribe the electors of an electoral division. *Gugy v. Larkin*, 7 L. C. R. 11.

46. Even for the payment of lawful expenses, and under section 6 of the Corrupt Practices Act, 1860, the note is void. *Willet v. de Grosbois*, 17 L. C. J. 293, 2 Randolph, 79.

47. Likewise a subscription to an election fund, under section 131 of the Dominion Elections Act, ch. 8. *St-Louis v. Sénécal*, 33 L. C. J. 325.

48. The Canada Temperance Act and Quebec License Act of 1878 avoid, between the immediate parties only, all securities given for liquors sold in contravention of the Act. Therefore, the sale of liquors is an illegal consideration for a bill. Civil Code of L. C. art. 1481. *Smith v. McEachern*, 1 N. S. D. 299; 3 N. S. D. 35 and 279.

49. There is no presumption that the date of a promissory note is contemporaneous with the debt which forms the consideration; therefore a note given for liquor after the passing of the Act, 15 Vic., c. 51,

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was held not to be void without proof that the sale took place after the passing of the Act. *McCam v. Reilly*, M. B., 3 A. 154.

§ 27.

50. A lottery ticket is not a legal consideration, but as the statute against lotteries, C. R. S., ch. 159, has not avoided the contract given for it, a note for a lottery ticket is valid in the hands of a holder in good faith and for value, but not between the immediate parties. *Wallbridge v. Becket*, U. C., 13 Q. B. 395; *Evans v. Morley*, U. C., 21 Q. B. 236.

51. Stock gambling on the Stock Exchange, and all gambling speculations on the rise and fall of bank and other stocks or merchandise, without any intention of delivery, are illegal considerations for a bill. *C. C. 1927*; *Bank of Toronto v. MacDougall*, U. C., 15 C. P. 345; *Fenwick v. Ansell*, 5 L. N. 290; *Shaw v. Carter*, 26 L. C. J. 151; *Allison v. McDougall*, 27 L. C. J. 355; *McDougall v. Demers*, 30 L. C. J. 168; *Russell v. Fenwick*, 17 R. L. 675.

52. In England, where "all contracts or agreements by way of gaming" are null and void by statute, 8 and 9 Vict., c. 109, s. 18, the *bonâ fide* holder for value of note given in respect of gambling transactions on the Stock Exchange may recover from the maker. *Day v. Stuart*, 6 Bing. 109; *Hay v. Hayling*, 16 Q. B. 423; 20 L. J. Q. B. 171; and the holder for value may recover, although he had notice of the note having been so given, the consideration not being declared "illegal" by the statute. *Liley v. Rankin*, 56 L. J. Q. B. 248; *Thacker v. Hardy*, 48 L. J. Q. B. 293; *Beeston v. Beeston*, 45 L. J., Ex. 230; *Fitch v. Jones*, 5 E. & B. 238. But see *Tiedeman*, § 449. See *Byles*, 14th ed 162 and section 30, nn. 11 and 23, and notes.

53. In France the illegality of consideration of a note, for instance, for gambling speculations cannot be opposed to a *bonâ fide* holder for value, *le tiers porteur de bonne foi*. *Cass.*, 12th April, 1854, D. 54, 1, 180; *Cass.*, 4th Dec., 1854; *ibid.* 413; *Angers*, 24th August, 1865; D. 66, 2, 211; *Rouen*, 14th July, 1854; D. 56, 2, 16; *Douai*, 8th August, 1857; D. 58, 2, 46; *Orleans*, 24th June, 1868; D. 68, 2, 195; *Agen*, 1st April, 1873; D. 75, 2, 216. See also cases cited in 4 *Alauzet*, 35, and 1 *Bedarride*, 179. See *infra*, n. 61.

54. When a bill is given for a consideration which is not only illegal, but which by statute expressly makes the bill void, it is, as against the party who gave it, void in the hands of all parties, whether immediate or remote. *Edwards v. Dick*, 4 B. & Ald. 212; *Shillito v. Theed*, 7 Bing. 405; *Fee v. Gonegal*, 19 An. 263, 368, 439, 449; 21 An. 165; *Groves v. Clarke*, 21 An. 567, 635; See *Hill v. Martin*, 12 Martin, 183. See notes under section 30.

55. For instance, A. draws a bill on B. payable to his own order. B. accepts it for a consideration which by statute absolutely avoids it. A. indorses it to C., who takes it for value and without notice. C. can sue A., but he cannot sue B. *Edwards v. Dick*, 4 B. & Ald. 212; *Reed v. Wiggins*, 13 C. B. N. S. 220.

56. The Canadian Insolvent Act 1864 (now repealed), sect. 8, subsect. 3, enacted that all contracts made by a debtor with intent to defraud his creditors, "and so made with the knowledge of the person contracting with the debtor, are prohibited and are null and void." Held, that a note given to defraud as aforesaid was absolutely void even in the hands of a holder in due course. *Davis v. Muir*, 13 L. C. J. 184. This decision seems to go beyond the English cases.

56a. But in England a fraudulent preference cannot be opposed to a *bonâ fide* holder, because under the statute it is not absolutely void.

§ 27.

Newham v. Stevenson, 10 C. B. 722; White v. Garden, 10 C. B. 919, Stevenson v. Newham, 13 C. B. 302.

57. In Quebec, a note for a gambling debt is void in the hands of a holder in good faith and for value, under article 1927 of the Civil Code, which enacts that "there is no right of action for the recovery of money or any other thing claimed under a gaming contract or a bet." Biroleau v. Derouin, 7 L. C. J. 128. See also Ladouceur v. Morasse, 2 Stephens Dig. 182, and notes under section 30.

58. Likewise in Ontario within section 53, sub-sec. 3, R. S. O., ch. 47. In Re Summerfield v. Worts, O. R., 12 Q. B. D. 48.

59. But in Nova Scotia the contract is not void, and the holder for value and in good faith may recover. Lawrence v. Hearn, 21 N. S. R. 375. See notes.

60. It is no defence on the part of the maker to plead that the note was indorsed after maturity to plaintiffs, in payment of a gambling debt. Burr v. Marsh, 1 Ont. Dig. 533. See also Flower v. Sadler, 10 Q. B. & D. 572; Armstrong v. Gibson, 11 Am. R. 599.

61. A note obtained from the maker by fraud is void in the hands of a *bonâ fide* holder for value. La Banque Jacque Cartier v. Lescard, 15 R. L. 14; L'Abbé v. Normandin, 32 L. C. J. 163; La Banque Jacques-Cartier v. Leblanc, M. L. R., 6 S. C. 217; Contra Arnold v. Caldwell, 1 Ma. R. 81; McIntosh v. McLeod, 6 R. & G. 128; 6 C. L. 449; Cass. 26th Dec., 1818; Cass., 28th January, 1819; Paris, 22nd December, 1825; Rej. 15th March, 1826; Rej. 24th April, 1827; Paris, 22nd May, 1828, 6th February, 1830; Cass. 15th May, 1839; Cass. 3rd February, 1847; all cited in 1 Bédarride, 179, 2 Pardessus, 226, and Gilbert sur Sirey, Com. art. 116, nn. 48 to 58; 4 Massé, nn. 95 and 132; Horson, 163; 1 Nouguié, 163; Persil, 68; Chalmers, 89; Byles, 14th ed, 156. See notes under section 30.

62. B. indorses upon the condition that A. should also indorse. A. did not indorse. Held, that B. was not liable even in the hands of a holder for value but with notice. Ontario Bank v. Gibson, 3 Ma. R. 406. Awde v. Dixon, 6 Ex. 869, approved. See section 29, n. 1 and notes under section 30.

A holder for value:—

63. A holder for value may or not be a holder in due course. Raphael v. Bank of England, 17 C. B. 174. See sect. 29 of the Act. See also section 63, n. 24.

64. C., the payee of a bill, holds it for value. He indorses it to D. without value, *e. g.*, by way of gift or for collection. D. is, as regards the drawer and acceptor, a holder for value. Milnes v. Dawson, 5 Exch. 948; Denton v. Peters, L. R., 5 Q. B., 477.

The following illustrations are from Chalmers, 74:—

65. B. owes C. £50. In order to pay C., A. at B.'s request draws a bill on B for £50 in favor of C. C. is a holder for value, and can sue A., though A. has received no value. Scott v. Lifford, 1 Camp. 246.

66. A. draws a bill on B. payable to his own order. B. to accommodate A. accepts it. Subsequently A. gives value to B. A. is a holder for value. Burdon v. Benton, 9 Q. B. 843.

67. B. makes a note in favor of C. C. is the treasurer of a loan society, and the consideration for the note is money advanced by the society to B. C. is a holder for value. Lomas v. Bradshaw, 19 L. J. C. P. 273.

68. C., for value. D. value. B.

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68. C., the holder of a bill, indorses it in blank to D., receiving no value. D. for value transfers it by delivery to E. E. is a holder for value. *Barber v. Richards*, 6 Exch. 63. § 27.

69. A. at the request of X. draws a bill payable to C. for X.'s account with C. X. remits the bill to C. C. is a holder for value. It is immaterial that there is no consideration between A. and X., or that the consideration fails. *Munroe v. Bordier*, 8 C. B. 862; *Watson v. Russell*, 3 B. & S. 34; 31 L. J. Q. B. 304; 5 B. & S. 968, Ex. Ch.; 34 L. J. Q. B. 93.

70. S., in the West Indies, is indebted to C. in Paris. In order to pay him, S. remits money to X., his correspondent in London, who thereupon obtains a bill for the amount, drawn by A. upon Paris, payable to C.'s order. X. remits the bill to C., but fails before he pays A. for it. S. subsequently pays C. C. is a holder for value and can sue A. *Poirier v. Morris*, 2 E. & B. 89.

When the holder has a lien. See sections 53 and 82 (3).

71. A lien is an implied pledge. *Brandon v. Barnett*, 3 C. B. 531.

72. D. holds a bill indorsed in blank as agent for C.; D. wrongfully pledges it to E. E. is a holder for value to the extent of the sum he advanced, and if he took the bill without notice of the fraud, he can retain the bill as against C., the true owner. *Collins v. Martin*, 1 B. & P. 648.

73. C., the holder of a bill for £100, deposits it with D. as security for a running account. At the time the bill matures the balance is in C.'s favor, but subsequently the balance turns against him to the extent of £50. D. is a holder for value as to £50. *Atwood v. Crowdie*, 1 Stark 483; *Gray v. Seckham*, L. R., 7 Ch. 483.

74. C., the holder of a bill for £100, indorses it to D., as a pledge for £50. D. is a holder for value as to £50, and this is the sum he can recover if he sues C. *Attenborough v. Clarke*, 27 L. J. Ex. 138.

75. C. keeps with his bankers a loan account and a general account. C. indorses to the bank, as collateral security for his loan account, a bill for £1,000, and draws against it to the extent of £500. C. becomes bankrupt, and his general account is overdrawn more than £500. The bank are holders of the bill for full value. *Re European Bank*, L. R., 8 Ch. 24.

76. The drawer of a bill for £100, which has been accepted for his accommodation, indorses it to C. as a security for £50. If the acceptor becomes bankrupt, C. can tender a proof for £100, but can only receive dividends to the extent of £50. *Ex parte Newton*, 16 Ch. D. 330, C. A.

77. A bill indorsed by a customer to his banker, and entered "short," remains the property of the customer, though the banker may have a lien on it. *Thompson v. Giles*, 2 B. & C. 422.

78. The "discount" of a bill must be distinguished from the pledge or deposit of a bill as security. *Ex parte Twogood*, 19 Ves. 229; *Re Gomersall*, 1 Ch. D. 142. *Ex parte Schofield*, 12 Ch. D. 337.

79. A "discounter" is a holder for full value. *Ibid.*; *Tiedeman v. Goldsmidt*, 1 De G. F. & J. 11.

80. The position of a pledgee is this: If he sue a third party he sues as trustee for the pledgor, as regards the difference between the amount he has advanced and the amount of the bill. *Reid v. Furnival*, 1 Cr. & M. 538.

§ 27.

81. Like any other bailee, the pledgee of a bill must use due diligence with reference to it, having regard to the peculiar nature of the thing bailed, *v.g.*, he must not part with it: he must if he can collect it at maturity; if he cannot, he must give the proper notices of dishonor. *Peacock v. Purcell*, 32 L. J. C. P. 266.

82. A banker has, in the absence of agreement to the contrary, a lien on all bills received from a customer in the ordinary course of banking business in respect of any balance that may be due from such customer. *Ibid.*; *London Chartered Bank of Australia v. White*, 4 App. Cas. 413, P. C.; *Johnson v. Roberts*, L. R., 10 Ch. 505; *Currie v. Misa*, 1 App. Cas. 569, H. L.

83. If the banker knows that the bills do not belong to his customer, no lien can attach. *Ex parte Kingston*, L. R., 6 Ch. 632.

84. A broker who deals in bills may have a lien similar to a banker's. *Jones v. Peppercorn*, John. 430; 28 L. J. Ch. 158.

Valuable consideration.

By section 27:—"Valuable consideration for a bill may be constituted by any consideration sufficient to support a simple contract." Therefore, what is valuable consideration for a bill or note must be determined according to the laws in force in each Province. Although the doctrine of consideration prevailing in England and the countries ruled by English law is not known as to its general character to the system of jurisprudence peculiar to Quebec and other nations governed by the Roman or Civil Law, yet the main principle of the doctrine is recognized at least with regard to commercial paper. The Quebec Code contains no provision as to the consideration of bills, but it may be argued, and probably with reason, that under article 2340 of that Code, the laws of England in force on the 30th of May, 1849, must be applied. Such a conclusion may well be drawn from the decision of the Privy Council in *Macdonald v. Whitfield*. The only enactments in the Code will be found in article 989 relating to the consideration of contracts generally.

Article 989 of the Quebec Civil Code says:—"A contract without a consideration, or with an unlawful consideration, has no effect; but it is not the less valid though the consideration be not expressed or be incorrectly expressed in the writing which is evidence of the contract.

"The consideration is unlawful when it is prohibited by law, or is contrary to good morals or public order."

According to the English common law and section 30 of the Act, different in this respect from the French and other continental Codes, "every party whose signature appears on a bill is *primâ facie* deemed to have become a party thereto for value," so

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that a consideration need not be expressed. This is new law in § 27. the Province of Quebec, where, under the Promissory Note Act of 1849 and Article 2285 of the Civil Code, the consideration for a bill was only presumed from the insertion of the words "value received." These words have no longer any meaning. See notes under section 3.

Considerations are divided by the English writers into two principal classes, *good* and *valuable*. A good consideration is the natural affection of near relations, and a valuable consideration is anything which has a pecuniary value. It has been held in England, that only a valuable consideration can support a bill or note, and this is the principle laid down in sections 2 (i) and 27. So a bill, note, or cheque, given by a father to his son, or by the son to an aged parent, in consideration of natural love and affection, cannot be sued on. Tiedeman, § 159. See *Supra*, n. 6, as to Quebec. It has been frequently held, however, that a note, given for the furtherance of some charitable object, to found a college or hospital, to support a church or its pastor, and the like, is binding upon the maker. Tiedeman, § 161. It is hardly necessary to add that the purchase of all kinds of property, both real and personal, will form a sufficient consideration. For instance, the sale of land, although subject to a mortgage, or even a promise of sale, the understanding being that the absolute title is to pass when the last instalment of the purchase money is paid; likewise the transfer of incorporeal rights, such as the good will of a business, the rights of corporate membership, a policy of life insurance, a franchise, a patent although ultimately declared *ultra vires*, agreements to render services, or the actual performance of them, the release of legal liabilities, are all valuable considerations. Tiedeman, § 172, 173.

Total failure or illegality of consideration avoids the bill between the immediate parties, but not in the hands of a holder in due course. See notes under section 30.

It was at one time considered, that where part of the consideration is illegal, the entire instrument is void; but it is now well settled that only the invalid part is void if it can be severed from the rest, and if it cannot, the whole is void. Endlich, § 460; Tiedeman, § 179; 2 Pothier, Evans, ed. 17; *Cole v. Cole*, 9 La. An., 33, 339; 11 Wheaton 258; 2 Peters, 527; 11 How. 38; 16 id. 314; 17 id. 232.

§ 28.

It often happens that a merchant deposits bills as "collateral." The person to whom they are transferred becomes the holder in due course, but only to the extent of the sum for which the bill is pledged. The *primâ facie* presumption is always that the collateral is only for the balance due at the time it is given, but this presumption may be rebutted by evidence of an intention to cover all future balances. Section 27 sub-sec. 3 and sec. 53.

See notes under section 30, as to the rights of a holder in due course and sec. 29, n, 11.

Accommodation party to a bill.

28. An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person;

His liability.

(2) An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not, (1)

See sections 27, 36, 38, 53, 54, 59, 61, 62.

1. As to the practice in Canada of taking notes for discount, from the maker who brings them indorsed, thus suggesting accommodation endorsements. See *Bank of Montreal v. Reynolds*, U. C., 25 Q. B. 352.

2. Bill accepted for the accommodation of the drawer. This is an accommodation bill, and the acceptor is an accommodation acceptor. *Collott v. Haigh*, 3 Camp. 281.

3. Bill drawn, indorsed, and accepted for the accommodation of X., who is not a party thereto. The drawer and acceptor receive a commission for so doing. This is an accommodation bill. *Oriental Financial Corporation v. Overend*, L. R., 7 Ch. 142.

4. Bill drawn against a running account, and accepted. This, it seems, is not an accommodation bill, though the account may have been against the drawer when the bill was drawn, or accepted or payable. *Ex parte Swan*, L. R., 6 Eq. at p. 356; *Wilks v. Hornby*, 10 W. R. 742.

5. Bill drawn payable to the order of C., and accepted. It appears that the acceptor was indebted to C., but that the drawer signed to accommodate the acceptor. This is not an accommodation bill, though the drawer is an accommodation drawer. *Scott v. Lifford*, 1 Camp. 246; *Sleigh v. Sleigh*, 5 Exch. 514.

6. Bill payable to drawer's order is accepted for value. C., whose name is well known, indorses the bill to give currency. This is not

(1) *The Halifax Banking Co. v. Gillis*, 20 N. S. R. 406.

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an accommodation bill, but C. is an accommodation indorser. *Re Nunn, Buck, 113. Société Générale v. Metropolitan Bank, 27 L. T. N. S. 819.* § 29.

7. An accommodation bill is a bill whereof the principal debtor, according to the terms of the instrument, is in substance a mere surety for some other person, who may or may not be a party thereto. *Oriental Financial Corporation v. Overend, L. R., 7 Ch. 146; Ex parte European Bank, L. R., 7 Ch. 99.*

8. An accommodation bill is not issued within the meaning of sect. 64 of the Bills of Exchange Act, 1882 (corresponding to section 63 of the Canadian Act), until it has been delivered to some one who can sue upon it. *Engel v. Stourton, 53 J. P. 535.*

9. A person who indorses for the accommodation of the maker is liable to the holder for value, although the latter is well aware of said accommodation. *Béique v. Bury, 3 L. N. 160; Scott v. Quebec Bank, 7 L. N. 343; Lyman v. Dion, 13 L. C. J. 160; Southam v. Ranton, 9 A. R. 47; Miller v. Ferrier, U. C., 7 Q. B. 540; Muir v. Cameron, U. C., 10 Q. B. 356.* Even if the bill be transferred to him after maturity. *Grant v. Winstanley, U. C., 21 C. P. 257.*

10. As the payee of an accommodation note cannot himself sue the maker upon it, so neither can his indorsee without value; and if the latter only pays or only lends a small sum on the note, he can only enforce it for the sum lent. *Strathy v. Nicholls, U. C., 1 Q. B. 34.*

11. A second accommodation indorser who has paid a note after its becoming due may sue the maker or any prior party. *Breeze v. Baldwin, 5 O. S. 444.*

12. If a person indorses a note for the maker, for the purpose of enabling the latter to obtain an advance of money from a third person, who knows that the indorsement has been so obtained, the latter cannot apply the note to a pre-existing debt against the maker, or as security for some new arrangement to which the indorser was not a party. *Greenwood v. Perry, U. C., 19 C. P. 403; Torrance v. Bank of B. N. A., P. C., 5 App. Cas. 246.*

13. The holder of a bill for value, though having subsequently become aware of its being an accommodation bill, may release the drawer without releasing the acceptor. *City of Glasgow Bank v. Murdock, U. C., 11 C. P. 138.*

29. A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely:—

(a) That he became the holder of it before it was overdue and without notice that it had been previously dishonored, if such was the fact;

(b) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it;

§ 29.

Title defective in cases specified.

Right of subsequent holder.

(2) In particular, the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud. (1)

(3) A holder, whether for value or not, who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptance and all parties to the bill prior to that holder.

See section 3, 20, 35 and 38.

Complete and regular upon its face :—

1. Thus, if the holder takes a blank acceptance, or a bill wanting in any material particular, he takes it at his peril. *Awde v. Dixon*, 6 Exch. 869. See section 27, n. 62.

2. So also if the holder takes a bill which has been torn and the pieces pasted together, if the tearing appear to show an intention to cancel it. *Ingham v. Primrose*, 7 C. B. N. S. 82; 28 L. J. C. P. 294; *Scholey v. Ramisbottom*, 2 Camp. 485; *Redmayne v. Burton*, 2 L. T. N. S. 324. *Peel v. Kingsmill*, U. C., 7 Q. B. 364. See also *Colson v. Arnot*, 5 N. Y. 253; *Angle v. N. W. Ins. Co.*, 2 Otto. 342.

3. The indorsee of an altered bill, bearing marks of infirmity and indeed of knavery, cannot be considered an innocent holder. *Swaishland v. Davidson*, O. R., 3 Chy. 320. See section 63.

That he took the bill in good faith and for value :—

4. *Prima facie* a person who has the possession of a note indorsed in blank is the legal holder. *Howard v. Godard*, N. B., 4 All. 452.

5. B. endorsed a promissory note made by C. for the purpose of retiring another similar note which he had previously endorsed for C.'s accommodation, and gave it to C. Instead of retiring this note however, C. handed it to the plaintiff in payment of a debt who took it in good faith, but made no inquiry respecting C.'s title to the note or his authority so to deal with it. Held, affirming the judgment of the Queen's Bench, 43 Q. B. 599, that the plaintiff was entitled to recover against B. *Cross v. Currie*, 5 A. R. 31.

6. There being no evidence that the misrepresentation as to the quantity of land (which was the consideration of the note), if made at all, was made falsely or with intent to deceive the defendant or to induce

(1) *Star Kidney Pad Co. v. Greenwood*, O. R., 5 Q. B. D. 28; *Brooke v. Arnold*, 1 Ont. Dig. 550.

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him to do that which he otherwise would not have done. Held, that the plaintiff was a holder in good faith and for value. *Hill v. McLeod*, 5 R. & G. 280.

§ 29.

7. A person has no right to recover on a note, though made in his favor, if the maker place it in his hands merely for the purpose of its being taken care of. *Wisner v. Wisner*, U. C., 22 Q. B. 446.

8. A partner in a firm fraudulently indorses a firm bill to D. in payment of a private debt. E. is cognizant of the fraud, but is not a party to it. D. indorses the bill to E., who takes it for value and without notice. E. indorses it to F. F. acquires E's rights. If he gave value to E., he can sue all parties to the bill; if he did not give value, he can sue all parties except E. *May v. Chapman*, 16 M. & W. 355.

9. C., by fraud, induces B. to make a note in his favor. C. indorses the note to D., who takes it for value and without notice. Subsequently D. indorses the note for value back to C. C. cannot sue B. *Sawyer v. Wisewell*, 91 Mass. 42.

The following indorseees have been held holders in due course :—

10. An indorsee without value, if an intermediate party has given value. *Wood v. Ross*, U. C., 8 C. P. 299.

11. An indorsee of a note given as collateral security. *Exchange Bank v. Normand*, 13 R. L. 54. See clause 27 (3) and 82 of the Act.

12. The holder for collection. *Mills v. Philbin*, 3 R. de L. 255; *Alexander v. Taylor*, Step. Dig. 117, n. 85; *Robertson v. Furness*, U. C., 43 Q. B. 143; *Shepley v. Hurd*, 3 A. R. 549; *Allison v. Central Bank*, N. B., 4 A. 270; *Girvan v. Price*, N. B., 4 A. 309; *Howard v. Godard*, N. B., 4 A. 452; *Rej.* 26th April, 1826, D. 26, 1, 248.

13. Cheques fraudulently "initialled" cannot be repudiated by a bank when held by a holder in good faith and for value. *Banque Nationale v. City Bank*, 17 L. C. J. 197.

A well-known principle applying to all contracts and transactions of life is that good faith is always presumed, and that he who alleges bad faith must prove it. C. C. L. C. Arts. 993 and 2202; and such is also the principle of the Act, subject to the exceptions contained in section 30. But will negligence destroy good faith within the meaning of the Act? The doctrine of the Roman law, *magna negligentia culpr est*, has been adopted by all civilized nations, but not as regards negotiable paper.

"Gross negligence" said Lord Denman, may be evidence of *mala fides*, but it is not the same thing. We have shaken off the last remnant of the contrary doctrine. *Goodman v. Harvey*, 4 A. & E. 870.

The rule now well settled in England and in the United States is, that although gross negligence only ought to be considered as evidence of fraud, it is not conclusive of it, and this principle has been sanctioned by section 89 of the Act: "A thing is deemed to be done in good faith within the meaning of this act, where it is in fact done honestly, whether it is done negligently or not."

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§ 29. In *Raphael v. The Bank of England*, 17 C. B. 161, Creswell, J., said: "It seems to me that the omission of St. Paul, who is substantially the plaintiff here, to avail himself of the means of knowledge of the alleged felony (the larceny of the bill) that were at his disposal was not the point on which the decision of the case could properly be rested. A person who takes a negotiable instrument *bona fide* for value has undoubtedly a good title and is not affected by the want of title of the party from whom he takes. His having the means that the security had been lost or stolen, and neglecting to avail himself thereof, may amount to negligence, and Lord Tenterden at one time thought negligence was an answer to the action. But the doctrine in *Gill v. Cubitt*, 3 B. & C. 466, is not now approved of." See several decisions quoted in Tudor, *Lead. Cas.*, 3rd ed., 1884, p. 300.

Lord Blackburn, in the House of Lords, thus sums up the law on the subject in the case of *Jones v. Gordon*, 1877, H. L., 2 App. Cas. 629:—

"I consider it to be fully established that if value be given for a bill of exchange, it is not enough to show that there was carelessness, negligence, or foolishness in not suspecting that the bill was wrong, when there were circumstances that might have led a man to suspect that. All these are matters which tend to show that there was dishonesty in not doing it, but they do not in themselves make a defence to an action upon a bill of exchange. I take it that in order to make such a defence, whether in the case of a party who is solvent and *sui juris*, or when the bill is sought to be proved against the estate of a bankrupt, it is necessary to show that the person who gave value for the bill, *whether the value be great or small*, was affected with notice that there was something wrong about it when he took it. I do not think it is necessary that he should have notice of what the particular wrong was. If a man, knowing that a bill was in the hands of a person who had no right to it, should happen to think that perhaps the man had stolen it, when, if he had known the real truth, he would have found, not that the man had stolen it, but that he had obtained it by false pretences, I think that would not make any difference if he knew there was something wrong about it, and took it. If he take it in that way he takes it at his peril. But then, I think, such evidence of carelessness or blindness as I have referred to may, with other evidence, be good evidence upon the question, whether he did know there was something wrong in it.

If he was careless, and ought not the facts and to try the blundering something because he own secret make further my knowing that is dis Lord G fully absta may proper to avoid in history as any unbiase if he inquir would be co afterwards

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If he was (if I may use the phrase) honestly blundering and careless, and so took a bill of exchange or a bank note when he ought not to have taken it, still he is entitled to recover. But if the facts and circumstances are such that the jury, or whoever has to try the question, comes to the conclusion that he was not honestly blundering, but that he must have had a suspicion that there was something wrong, and he refrained from asking questions, not because he was an honest blunderer, but because he thought in his own secret mind—I suspect there is something wrong, and, if I make further inquiry it will be no longer my suspecting it, but my knowing it, and then I shall not be able to recover,—I think that is dishonesty."

§ 30.

Lord Gordon said in the same case: "If the appellant wilfully abstain from making himself cognizant of the facts, it may properly be said that if a man *wilfully* shuts his eyes so as to avoid inquiring into the circumstances connected with such a history as this, the only impression which can be produced upon any unbiased mind is, that he did so because he was afraid that if he inquired into the circumstances he would ascertain what would be equivalent to notice destructive of any claim he might afterwards make."

30. Every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value; Presumption of value and good faith.

(2) And every holder of a bill is *prima facie* deemed to be a holder in due course; but if, in an action on a bill, it is admitted or proved that the acceptance, issue or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof that he is such holder in due course shall be on him, unless and until he proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill by some other holder in due course; On whom burden of proof lies.

(3) No bill, although given for a usurious con- Usurious consideration..

§ 30. sideration or upon a usurious contract, is void in the hands of a holder, unless such holder had at time of its transfer to him actual knowledge that it was originally given for a usurious consideration, or upon a usurious contract; (1)

Consideration consisting of purchase money of patent right.

(4) Every bill or note the consideration of which consists, in whole or in part, of the purchase money of a patent right, or of a partial interest, limited geographically or otherwise, in a patent right, shall have written or printed prominently and legibly across the face thereof, before the same is issued, the words "given for a patent right;" and without such words thereon such instrument and any renewal thereof shall be void, except in the hands of a holder in due course without notice of such consideration;

Liability of transferee.

(5) The indorsee or other transferee of any such instrument, having the words aforesaid so printed or written thereon, shall take the same subject to any defence or set-off in respect of the whole or any part thereof which would have existed between the original parties;

Penalty.

(6) Every one who issues, sells or transfers, by indorsement or delivery, any such instrument not having the words "given for a patent right" printed or written in manner aforesaid across the face thereof, knowing the consideration of such instrument to have consisted, in whole or in part, of the purchase money of a patent right, or of a partial interest, limited geographically or otherwise, in a patent right, is guilty of a misdemeanor, and liable to imprisonment for any term

(1) See also Ca. 29 & 30 Vict., c. 10, s. 5; 34 Vict., c. 5, s. 52.

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See sections 22, 27, 29, 30 and 38.

The plaintiff must prove that he is a holder in due course, in the following cases:—

1. When there is fraud in the making of the note. *Hunt v. Lee*, 2 R. de L. 28; *Withall v. Ruston*, 7 L. C. R. 399; *Converse v. Brown*, 10 L. C. J. 196; *Walters v. Mohan*, 6 L. N. 316; *Bank of Montreal v. Cameron*, U. C., 17 Q. B. 636; *Waddell v. Jaynes*, U. C., 22 C. P. 212; *Bowen v. Viel*, 6 Martin N. S. 566; *Louisiana State Bank v. Orleans Navigation Co.*, 3 La. An. 294.

1a. When a note is signed by a married woman separated as to property, the holder must prove that he gave her value. *The Artisans Building Society v. Lemieux*, 15 Q. L. R. 35; *The Union Bank v. Gagnon*, 15 Q. L. R. 31. See section 22, n. 21.

2. When the note has been obtained by fraud. *Baxter v. Bilodeau*, 9 Q. L. R. 268; *Belanger v. Baxter*, 12 R. L. 532; *The Exchange Bank v. Carle*, 15 R. L. 250; 31 L. C. J. 90; *Morin v. Grenier, de Bellefeuille's Code*, p. 662, n. 25; *Dumas v. Baxter*, 14 R. L. 496; *Waters v. Mahan*, 6 L. N. 316; *Baxter v. Brennan*, 17 R. L. 360; *Maulson v. Arr*, U. C., 11 Q. B. 81; *McCollum v. Church*, 3 O. S. 356; *Smith v. Flemming*, 2 Han. 117; *Union Bank v. Ryan*, 21 La. An. 551; *Moffatt v. Murray*, 18 Louis. 357; *Copley v. McFarland*, 9 Robinson 183; *Morgan v. Yarrowrough*, 16 Louis. 76; *Moffatt v. Murray*, 18 id. 357; *Withall v. Ruston*, 7 L. C. R. 399; *Mills v. Barber*, 1 Ross 100, 166.

3. Where an individual takes a note made or indorsed by a partnership, knowing that it was not made or indorsed for the purposes of the partnership, the *onus* is cast upon the holder of proving that the partnership signature was given with the knowledge or assent of every member of the firm. *Union Bank v. Bulmer*, 2 Ma. R. 380; *Harrison v. Poole*, 4 Robinson 193. See all the cases collected in *Tudor*, 3rd ed. 485. See *infra*, n. 26.

4. Where the indorser places his name upon a note in blank, as the maker, payee, and it appears that the name of the maker was afterwards signed without authority. *Hanscome v. Cotton*, U. C., 15 Q. B. 42.

5. Where a note is payable to bearer, and before it becomes due, the plaintiff, for a valuable consideration, delivers it to certain persons, who lose the note, and the same then comes into the hands of the plaintiff by finding, and not by assignment or delivery, and for consideration, the plaintiff cannot recover thereon. *Wanzer v. Stoutenburgh*, U. C., 13 Q. B. 184.

6. Where the indorsee is merely the *prête-nom* of the indorser who has obtained the note by fraud. *Re The West London Bank, Cass.*, 19th March, 1878, S. 79, 1, 76; *Exchange Bank of Canada v. Carle*, M. L. R., 3 Q. B. 61.

7. Where the plaintiff's husband knows the fraud and the whole history of the note. *Despard v. Elgie*, Toronto, 20th August, 1890, *Falconbridge, J.*

§ 30.

8. The maker or acceptor cannot plead in an action by a holder in due course of bills given as collateral security for the price of land, that he has just cause to fear eviction or that he has paid mortgages. *Cass., 2nd May, 1836, D. 36, 1, 163; Mawrin v. Chambers, 6 Robinson, 62.*

9. A note made payable to the cashier of a bank, and drawn in a particular form to be within its usages, was sent to an agent to procure a discount at the bank; the bank having refused the discount, the agent sold the note, and applied the proceeds to his own use. Held, that the note, on its face, showed the particular purpose for which it was made, and put a taker on inquiry, and he could not recover, though in fact he had not knowledge of the fraud. *Fowler v. Brantly, 14 Peters, 381.*

10. When a note is taken by a holder, under circumstances affording reasonable ground of suspicion, he should enquire if the party came by it honestly, and if he take it under these circumstances, without proper enquiry, with a view to his profit, it is at his own risk. *Nicholson v. Patton, 13 Louis. 216. See Mawrin v. Chambers, 16 id. 207; Jones v. Gordon, H. L., 2 App. Cas. 616.*

10a. Where a cheque is torn into four pieces, and afterwards pasted together, and much soiled, it was held to carry notice on its face sufficient to put a purchaser upon inquiry, and the bank paying the cheque without inquiry was held liable for the amount. *Scholey v. Ramsbottom, 2 Campb. 485. Supra, nn. 9, 10 and section 29, nn. 1, 2, 3.*

11. Held, under the English Act, that when fraud is proved, the burden of proof is on the holder to prove both that value has been given, and that it has been given in good faith without notice of the fraud. *Taam v. Haslar, 58 L. J. Q. B. 432; 38 W. R. 109.*

12. Defendant gave a note to G., who agreed to hold it as security. In violation of this agreement, G. indorsed it to C. in order to raise money for G. C. got the note discounted, and had to take it up at maturity, and two years afterwards he transferred to H. Held, that unless C. knew the circumstances under which he got the note, or was implicated in G.'s fraud, he would have a right to recover the amount from the defendant, and that H., claiming under C., had the same right. *Hastings v. O'Maloney, N. B., 4 A. 305.*

13. A holder who has accepted a note given for the price of a vessel transferred by a bill of sale, duly signed and registered, but seized in execution before actual possession was obtained, is entitled to recover, unless the maker shows that he was induced to make the note by fraud. *Taylor v. McFarlane, 3 R. & G. 10.*

14. If a note be fraudulently obtained from the holder by means of a misrepresentation, he will not thereby lose his rights against the party who has committed the fraud. *Grover v. Watson, Steven's N.B. Dig. 66.*

The plaintiff is not bound to prove that he gave value in the following cases:—

15. In Quebec, when the note is expressed for "value received," and the defendant does not accompany his plea of want of consideration by the affidavit required by art. 145 of the Code of Civil Procedure. *Kelly v. O'Connell, 16 L. C. R. 140; Straas v. Gilbert, 15 Q. L. R. 591. Otherwise by section 30 (2). See notes under sections 3 and 27.*

16. Where the defendant has only proved that he received no value. *Pichette v. Lajoie, 10 L. N. 266; Mair v. McLean, U. C., 1 Q. B. 455.*

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17. Where the defendant has not impeached the consideration. *Sutherland v. Patterson*, 1 Ont. Dig. 512.

§ 30.

18. Where upon the face of the bill there is a presumption that the defendant, the drawer of a cheque, had no money in the hands of the drawee, *v. g.*, where the defendant wrote to plaintiffs: "Please pay to the bearer \$850, and I will see you later." *Nichols v. Ryan*, 2 R. L. 111.

19. Held, that as the defendant had put his defence on the ground of forgery, the plaintiff was not called upon to prove the consideration, nor was the judge to leave to the jury whether he had given any consideration for the note (see *Harvey v. Towers*, 6 Exch. 656). *Math. vet v. Roach*, Mich. T. 1833; N. B., *Stev. Dig.*

Chalmers at page 84 has the following illustrations:—

20. A. draws a bill on B. and indorses it to C. C. sues B. It is shown that B. accepted it for A.'s accommodation. C. is not called on to prove that he gave value, he can recover without so doing. *Mills v. Barber* (1836), 1 M. & W. 425.

21. B. makes a note payable to C. C. indorses it to D., who sues B. If it appears that B. made the note for an illegal consideration, D. must prove that he gave value. *Bailey v. Bidwell* (1844), 13 M. & W. 73.

22. The holder of a bill indorses it to D. to get it discounted. D. fraudulently negotiates it to E., who negotiates it to F. F. sues the acceptor. Evidence is given of D.'s fraud. F. must prove that he is a holder for value. Cf. *Smith v. Braine* (1851), 16 Q. B. 244; *Berry v. Alderman* (1853), 14 C. B. 95.

23. B. makes a note payable to C., the consideration for which is a wager, *i. e.*, a consideration void by statute, but not prohibited under a penalty. C. indorses it to D., who sues the maker. Evidence is given of these facts. D. is not called on to prove that he gave value. *Fitch v. Jones* (1855), 5 E. & B. 238; *Belfast Banking Co. v. Doherty* (1879), 4 Ir. L. R. Q. B. D. 124.

24. Action against the maker of a note payable to bearer. It is shown to have been stolen from the true owner. It lies on the holder to prove that he gave value. *Raphael v. Bank of England* (1855), 17 C. B. 161.

25. An acceptance is given in renewal of a bill which turns out to be a forgery. The genuine bill is negotiated, and the holder sues the acceptor. Evidence is given of these facts. It lies on the holder to prove that he is a holder for value. *Mather v. Maidstone* (1856), 18 C. B. 273; 25 L. J. C. P. 310.

26. A partner accepts a bill in the firm's name for a private debt and in fraud of his co-partners. The bill is negotiated. The holder sues the firm as acceptors. As soon as it appears that the bill was given for a private debt, the holder is called upon to prove that he is a holder for value. *Hogg v. Skeen* (1865), 18 C. B. N. S. 426; 34 L. J. C. P. 153.

27. If the holder show that he is a holder for full value, it is strong evidence of *bona fides*, and was formerly held to re-shift the burden of proof. *Raphael v. Bank of England* (1855), 17 C. B. 161; but Cf. *Jones v. Gordon* (1877), 2 App. Cas. at p. 628.

28. But what if the holder did not give full value? In America it has been held that if the holder has in good faith given partial value, he may recover *pro tanto*. *Holcomb v. Wyckoff* (1870), 10 Amer. R. 219; *Dresser v. Missouri Co.* (1876), 3 Otto 92, Sup. Ct. U. S.

§ 30.

RIGHTS OF HOLDER IN DUE COURSE.

Bills merely
void.

Want or illegality of consideration has given rise to few conflicts between the immediate parties, compared with the number of cases recorded, where the plaintiff is a remote party and a holder in good faith and for value. Chalmers, pp. 89, 90 and 91, lays down the following rules:—

10. "Fraud is a defence against an immediate party and against a remote party who is not a holder in due course ;

20. "Illegality of consideration, total or partial, is a defence against an immediate party, but not against a holder in due course ;

30. "When a bill is given for a consideration, which by statute expressly makes it void, it is, as against the party who gave it, void in the hands of all parties, whether immediate or remote."

Yet the decisions, even in England, do not seem to agree entirely as to the correctness of these propositions. In the notes under section 13, will be found two Ontario cases, where the Courts held that notes given on a Sunday contrary to the Provincial Statute which declares "utterly null and void" all contracts made on that day, were however valid in the hands of a holder for value and in good faith. In England, where all contracts or agreements "by way of gaming" are "null and void" by statute, the *bonâ fide* holder for value may likewise recover although he be aware of the circumstances under which the bill was originally given. In *Lilley v. Rankin*, which originated since the passing of the Bill of Exchange Act, the Court of Queen's Bench so held in 1887. See sect. 27, n. 52. Huddleston B., said in this case: "As regards the other point, namely, that the judge should have asked the jury whether Lilley had knowledge of the circumstances under which the notes were given—that point would have been a good one, if the transaction between the two had been illegal and not void only. The Statute 9 Anne, c. 14, avoided bills and notes given for certain purposes, and by 5 and 6 Will. 4, c. 41. s. 15, such notes were to be deemed not merely void, but as given for an illegal consideration. Therefore, if these notes had come within the provisions of Anne, c. 14, the statute 5 and 6 Will. 4, c. 41, would have

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made them illegal; but they do not, and 8 and 9 Vict., c. 109, s. 18, merely enacts that contracts by way of gaming or wagering shall be void and not recoverable by legal process. It is not necessary to go through the various authorities. *Fitch v. Jones* is supported by *Beeston v. Beeston*, and the former expressly decides that it is no defence to an action of this kind to shew that Lilley was aware of the circumstances under which the notes were given if consideration was given for them. There is no doubt that my brother Manisty declined to put this question to the jury, and I think he was right in his refusal to do so; but even if he were wrong, his omission would not prejudice the defendant having regard to all the circumstances. This motion must therefore be refused with costs.

"SMITH, J.—This was an action by Lilley, brought on two promissory notes made by Rankin in Baird's favor, and indorsed by Baird over to Lilley. In the cross action Baird was joined as a defendant, but Rankin was rightly non-suited in this action. Now, was there any misdirection? I thought at one time that the second question mentioned by Mr. Horne Payne ought to have been left to the jury; but my brother Manisty was clearly right when the various statutes are looked at, the consideration for these notes being not illegal, but void only, under 8 and 9 Vict., c. 109. It might have been that the notes were given without consideration as between Rankin and Baird; still, if they were endorsed over for value to Lilley, the latter could recover on them. Mr. Daniel has satisfied me that the question, whether Lilley received the notes with notice of their having been given to Baird in respect of gambling transactions, is quite immaterial as affecting Lilley's right to recover upon them. As regards the question of consideration for the indorsement of the note from Baird to Lilley, my brother Huddleston has dealt with that point, and I do not desire to add anything to what he has said."

It seems difficult to reconcile this decision with section 29, subsection (b), which defines a holder in due course to be a person who took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of a person who negotiated it. No allusion was made to the Act.

It seems that a distinction must be made. If the bill be Absolutely void.

§ 30. merely voidable or void, or for an illegal consideration, the holder in due course is entitled to recover; but if it is absolutely void by statute, he cannot. This distinction is clearly defined by Tiedeman, s. 178: "Where the consideration is declared by decisions of the Courts or by statutory enactments to be simply void on account of illegality, it does not affect the validity of the contract any more than the mere absence of a consideration would affect it; and the *bonâ fide* holder of a commercial instrument would nevertheless be able to maintain his action upon it. But where the statute, making the consideration illegal, declares a contract founded on such a consideration to be *absolutely* void, the language of the statute must be given its proper effect, and so the Courts have held that the commercial paper founded on such considerations is void even in the hands of *bonâ fide* holders." See also Hawthorne, 77.

Such is the clear policy of the Bills of Exchange Act. By section 20, a bill filled up contrary to instructions is valid and effectual for all purposes in the hands of a holder in due course. By section 21, the holder in due course is again protected against fraud in the delivery of the bill, and even against larceny. By section 22, the incapacity of one or more of the parties to a bill in no way diminishes the liability of the other parties thereto. By section 24, even in the case of the forgery of a cheque, the drawer must give notice within a year after he has acquired notice of such forgery, otherwise the bank is discharged. By section 30, a bill tainted with usury is valid in the hands of a holder in due course, although the usury laws ⁽¹⁾ declared all usurious contracts absolutely null and void. By section 30, sub-sec. 4, 5 and 6, every person who issues or transfers a bill or note for a patent right, without writing across its face the words "given for a patent right," is guilty of a misdemeanor, and the bill or note is void "except in the hands of a holder in due course without notice of such consideration." By sections 54, 55 and 87, a party is estopped in certain cases from setting up forgery against a holder in due course. By section 63, where the material alteration of a bill is not apparent, the holder in due course may enforce payment of it, according to its original and true tenor.

(1) Usury laws have been repealed in Canada. See notes under section 57.

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Finally, section 30, subs. 2, contains an express provision upon the point ; it defines the position of the holder in due course of a bill "obtained by or affected with fraud, duress, or force and fear, or illegality." He is not to be non-suited, but he must prove that he is such holder in due course, within the meaning of sections 29 and 30, or that subsequent to the alleged fraud or illegality, value has in good faith been given by some other holder in due course. § 30.

The consequence of this sweeping language is obvious. Error, ^{Fraud, Error, etc.} fraud, violence, or fear are generally causes of nullity in contracts, C. C. L. C. art. 991; but under the above section, they must be limited to the immediate parties, and cannot be extended to a holder in due course. The principle is the same in all countries. Alauzet, vol. IV, p. 58, says : "Les principes généraux qui régissent toutes les obligations conventionnelles sont applicables aux lettres de change ; et si la lettre de change a été arrachée par la violence, extorquée par le dol, ou souscrite par erreur, elle sera nulle entre les contractants, et sauf les droits des tiers de bonne foi, à qui cette nullité ne pourrait être opposée." See also 1 Bédarride, p. 179; supra, section 27, n. 61; sect. 29, nn. 5 and 13; sect. 30, n. 12; 3 Randolph, 1891; Byles, 14th ed. 156; Hawthorne, 73.

These principles are generally conceded, when it is established that the party deceived knew that he was signing at least a negotiable paper, and that the error or fraud affects only its particulars, for instance, the amount payable, or the term of payment. Chalmers, 89. But it has been held in some cases, and Chalmers asserts at page 258, that where a person is induced by fraud to sign a bill or note, under the belief that he is signing a wholly different instrument, his signature is null and void, even in the hands of a holder in due course, provided that in so signing he acted without negligence. Chalmers quotes two decisions in support of this doctrine : *Foster v. McKinnon*, L. R., 4 C. P. 704, 1869, "the only English case," he says, "on the point ;" and *Griffiths v. Kellog*, an American case decided in 1876, 20 Amer. R. 48. And to these may be added three Quebec decisions in *La Banque Jacques Cartier v. Lescard*, *La Banque Jacques Cartier v. Leblanc*, and *L'Abbé v. Normandin*, all noted under section 27, n. 61.

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In *Foster v. McKinnon*, an old man, with enfeebled sight, was induced to sign his name on the back of a bill, by being told that it was a railway guarantee which he had promised to sign. Byles, J., said: "The defendant, according to the finding of the jury, never intended to indorse a bill of exchange at all, but intended to sign a contract of an entirely different nature. It was not his design, and, if he were guilty of no negligence, it was not even his fault that the instrument turned out to be a bill of exchange. It was as if he had written his name on a sheet of paper for the purpose of franking a letter, or in a lady's album, or on an order for admission to the Temple Church, or on the fly-leaf of a book, and there had already been without his knowledge a bill of exchange or promissory note payable to order inscribed on the other side of the paper. To make the case clearer, suppose the bill or note on the other side of the paper in each of these cases be written at a time subsequent to the signature, then the fraudulent misapplication of that genuine signature to a different purpose would have been a counterfeit alteration of a writing with intent to defraud, and would therefore have amounted to a forgery. In that case the signer would not have been bound by his signature, for two reasons—first, that he never in fact signed the writing declared on, and secondly, that he never intended to sign any such contract."

Griffiths v. Kellog is a Wisconsin case, where the Court decided that where a short-sighted person, unable to read without glasses, signs a note without them, upon the representation that it is a different paper, he would not be responsible even to a holder in due course, although he did not read the paper, when he could have done so with the aid of his glasses, and although his children, who could read, were present and were not requested to read the paper to him. But by referring to Randolph, vol. III., § 1873, several contrary American decisions will be found. They are summed up as follows: "Where a party signs a note, under the belief that it is a different paper, although he is misled by the fraud of the payee or of some other party, he will be estopped from setting up the fraud against a *bonâ fide* purchaser before maturity, if he has been guilty of negligence in executing the paper. And he will not be excused by mere inability to read without glasses, which were not at hand; or by his ignorance of

the language of the instrument, or other persons where he was unable to read and which, I take to be the law.

"But the defendant, if read by a person, and he must be on the ground of fraud against him, or of a majority of a majority."

It is difficult to say even that of 29 and 30, and fraud is obtained by means, bound to pay the principle of man with even a bill the instrument called upon to request the has confidence, before or request is his mistake his own act faith and

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the language ; or even by his inability to read, where there were other persons present who could have read the paper to him, and where he has made no effort whatever to ascertain what the instrument was." Tiedeman, § 285, adds: "Even one who is unable to read or write may be guilty of negligence. As was said by Chief Justice Gibson, if he will not demand to have it read and explained to him, he is guilty of supine negligence, which, I take it, is not the subject of protection, either in equity or law.

"But there is never any excuse for one who is able to read himself, if he does not do so, but contents himself with bearing it read by another. By doing so, he unnecessarily reposes confidence in another, and if his confidence proves to be misplaced he must abide the consequence. Such a person cannot, on the ground of mistake and misrepresentation, prevent a recovery against him by a *bonâ fide* holder, at least that is the opinion of a majority of the Courts."

It is difficult to reconcile these decisions quoted by Chalmers, even that of Mr. Justice Byles in *Foster v. McKinnon*, with secs. 29 and 30, which make no distinction between fraud in the making and fraud in the signing of a bill, and provide that where a bill is *obtained by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration*, the holder will be bound to prove that value has been given in good faith. The principle of the Act is not arbitrary, but is reasonable. If an old man with enfeebled sight, as in the case of *Foster v. McKinnon*, or even a blind man, or one not understanding the language of the instrument, or unable to read with or without his glasses, is called upon to sign a paper, commercial or other, he should request the assistance of some third party in whose character he has confidence, in order to ascertain the true nature of the instrument, before affixing his signature to it. And if he fail to do so, or request the assistance of a man unworthy of his confidence, it is his misfortune, and he must himself bear the consequences of his own act, instead of a third party who has accepted it in good faith and £ value in the ordinary course of business.

These and similar cases based upon fraud are very different from the cases of notes written on the fly-leaf of a book, or a lady's album, where there is not only fraud but actual forgery,

§ 30. within the meaning of section 24 of the Bills of Exchange Act and of the Forgery Act. See Appendix and Tiedeman, s. 284; Byles, 14th ed., 313; also Hawthorne. 80.

As laid down by Chalmers and Tiedeman, illegality of consideration cannot be opposed against a holder in due course, unless by statute, it expressly and absolutely makes it void, that is, to all intents and purposes, as in the case of a note given by a married woman separated as to property for the debt of her husband. See section 22, n. 21. If merely illegal or void, it is valid in the hands of a holder in due course. Therefore the decision in *Birolean v. Derouin* must be received with caution, especially as article 1927 of the Civil Code merely denies the right of action. In England and France the same rule prevails. See decisions quoted under section 27, nn. 52 and 53.

Stolen bills.

It would seem in conclusion that outside of forged bills, bills declared by statute absolutely void and bills signed by parties incapacitated, the holder in due course of a bill complete and regular on the face of it is, in all cases, entitled to recover, and under sections 21 (2), 29 (2), and 30, it is difficult to hold otherwise, even where the bill has been obtained by means of larceny, "or other unlawful means." *Young v. Grote*, 4 Bingh. 253; *Ingham v. Primrose*, 7 C. B. N. S. 82; *Raphael v. Bank of England*, supra, n. 24; *Vagliano v. Bank of England*, 58 L. J. Q. B. 357. Chalmers, 40; Tiedeman, §§ 181, 282; 1 Randolph, 217, 220. See section 21, sub. 2 (b), and sections 22, 24, 29, 30, 54, 55 and 63.

The difference between these cases and those of fraud, etc., mentioned above is manifest. Here there is no consent whatever, either to a bill or anything else, and as far as the parties incapacitated or the forged signatures are concerned, the instrument never had any inception or existence. The holder is moreover presumed to be acquainted with the parties and their signatures, see. 54, 55 and 87. In cases of fraud or error, on the contrary, or even larceny of the bill, the latter has an existence, however defective it may be between the original parties, and it is the misfortune of the true owner, if in the ordinary course of business it passes to a holder in due course. The holder has no means of knowing the fraud or error. One party must suffer, and it is highly important, if not indispensable to the negotia-

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tion and value of commercial paper, that the loss should be sustained by the party who has occasioned it, however innocent a victim he may be.

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This doctrine does not seem to be new in the English Law, and even in Byles on Bills, ed. 1884, p. 156, several old decisions are quoted fully supporting the same:— "But where a fraud has been practised on the maker or acceptor, an indorsee for value without notice may, nevertheless, recover against him... So, in an action by the indorsee against the maker of a note thirteen years old, the defendant obtained a rule *nisi* to set aside a judgment by default, on an affidavit that he, the defendant, was *swindled* out of the note. An affidavit being made on the other side, that the plaintiff took the note *bonâ fide* and gave a valuable consideration for it, the Court held that, *however improperly it might have been obtained*, a third person, who took it fairly and gave a consideration for it, was entitled to recover, and they discharged the rule." *Morris v. Lee*, 2 *Ld. Raym.* 1396; 1 *Stra.* 629; *Bayley*, 6th ed. 509; *Thiedeman v. Goldschmidt*, 1 *De G. F. & J.* 4. A., by false representations, induced B. to sign his name to a blank stamped paper, which A. afterwards secretly filled up as a promissory note for 100*l.*, and induced C. to advance him 100*l.* upon it. A. was indicted for defrauding C. Held, that C. had his remedy against B. on the note, and that the fraud, therefore, not being upon C. but upon B., the indictment was not sustained by the evidence. "*Rex v. Revett*, Bury Summer Assizes, 1829, *Coram* Garrow, B." Several decisions will also be found in the new edition of *Tudor, Mercantile cases*, 1884, pp. 291 to 302, to the same effect. At page 291, he sums up the English doctrine as follows: "Another important exception to the general rule exists in the case of negotiable instruments, for the property in them will pass like cash, by mere delivery to a person taking them *bonâ fide* and for value (now termed a holder in due course), who will be entitled to retain them as against the former owner, who may either have lost them or from whom they may have been stolen. Nor is it essential to the validity of the transfer that it should be made in market overt. The leading case upon the subject is *Miller v. Race*, 1 *Burr.* 452; 1 *Smith's Leading cases*, 389." See also *Hawthorne*, 69.

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At page 391, he adds: "It has been recently decided that the owner of a *negotiable instrument*, which has been stolen, has no title to it against a *bonâ fide* holder for value, although he has prosecuted the thief to conviction." *Chichester v. Hill*, 52 L. J. N. S., Q. B. 169. This decision was based upon the following provision of the Imperial Larceny Act, 24-25 Viet., c. 99, sec. 100, introduced into Canada in 1869 by the 32-33 Viet., c. 21, sec. 113: "Provided that if it appear... that the valuable security, being a negotiable instrument, has *bonâ fide* been taken or received by transfer or delivery, by some person or body corporate for a just and valuable consideration, without any notice or without any reasonable cause to suspect that the same had by any felony or misdemeanor been stolen, taken, obtained, extorted, embezzled, converted or disposed of, in such case the Court shall not award or order the restitution of such security."

Field, J., observed in *Chichester v. Hill*: "I think that the proviso in the section we are construing is not merely applicable to the words that it immediately follows, so as only to prevent a summary order being made against *bonâ fide* holders of negotiable instruments. I think it is intended to cut down the general right of property given by the first part of the section, and to protect the *bonâ fide* holder against all proceedings. In so deciding, it seems to me that we are deciding both according to law, and according to what is just between the parties, though, no doubt, it is a hard case on both sides." Williams, J.: "I am of the same opinion. It seems to me that by this section the title of the *bonâ fide* holder of a stolen instrument is protected against that of the person from whom it was stolen. As to the construction that has been put upon the statute of Hen. 8, I may say that I do not think it ever was the intention of that statute to affect the title acquired by a purchaser in market overt. And, upon searching, I find that that was the opinion of all the judges when the act was first passed. But a practice sprang up at the Old Bailey of disregarding that title, and the practice became too inveterate to be disregarded by the judges. So that I am not at all pressed by the construction that has been put upon the statute of Hen. 8. I think it is clear that the title of the *bonâ fide* holder for value was intended to be protected in the public interest."

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This conclusion is in accordance with the general principles of the Civil Code of Quebec. Art. 1487 says: "The sale of a thing which does not belong to the seller is null, subject to the exceptions declared in the three next following articles:—

§ 30.

" Art. 1488: The sale is valid if it be a commercial matter, or if the seller afterwards become owner of the thing.

" Art. 1489: If a thing lost or stolen be bought in good faith in a fair or market, or at a public sale, or from a trader dealing in similar articles, the owner cannot reclaim it without reimbursing to the purchaser the price he has paid for it.

" Art. 1490: If the thing lost or stolen be sold under the authority of law, it cannot be reclaimed.

" Art. 2268: Prescription of corporeal moveables takes place after the lapse of three years, reckoning from the loss of possession in favor of possessors in good faith, even when the loss of possession has been occasioned by theft.

" This prescription is not, however, necessary to prevent revendication, if the thing have been bought in good faith in a fair or market, or at a public sale, or from a trader dealing in similar articles, nor in commercial matters generally, saving the exception contained in the following paragraph.

" Nevertheless, so long as prescription has not been acquired, the thing lost or stolen may be revendicated, although it have been bought in good faith in the cases of the preceding paragraph; but the revendication in such cases can only take place upon reimbursing the purchaser for the price which he has paid.

" If the thing have been sold under the authority of law, it cannot in any case be revendicated.

" The stealer or other violent or clandestine possessor of a thing, and his successors by general title, are debarred from prescribing by articles 2197 and 2198."

Articles 1488, 1489 and 2268 of the Civil Code apply to the contract of pledge. Q. 42-43 Viet., cap. 19.

The same principles to a great extent will be found laid down in Tudor, Lead. Cas., 3rd ed., 1884, pp. 276 and following, under the heading, "The case of Market Overt."

§ 31.

Negotiation of Bills.

Negotiation of bills.

31. A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill;

To bearer.

(2) A bill payable to bearer is negotiated by delivery;

To order.

(3) A bill payable to order is negotiated by the indorsement of the holder completed by delivery;

Without indorsement.

(4) Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor; ⁽¹⁾

Personal liability may be avoided.

(5) Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability.

See sections 8, 25, 26, 56 and 75.

1. The term "negotiate" in reference to bills of exchange means to transfer for a valuable consideration. *Foster v. Bower*, U. C. 2 P. R. 256. See also *Wookey v. Pole*, 4 B. & Ald. 10; *Swan v. N. B. Australasian Co.*, 2 H. & C. 184; *Crouch v. Crédit Foncier*, L. R., 8 Q. B. 381; *Miller v. Race*, 1 Smith Lead. Cas. 479; *Whistler v. Forster*, 14 C. B. N. S. 257.

2. A note bearing the stamp of a bank, that the note is its property, is still negotiable. *Barthe v. Armstrong*, 5 R. L. 213. See section 75 of the Act.

3. A bill of exchange was thus indorsed: "Pay to the order of the Bank of Nova Scotia, Amherst," and by the agent of the bank at

(1) See *infra*, section 38, nn. 1 to 3.

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Amherst, "Pay to the order of the Bank of Nova Scotia, Halifax, for collection." The bill was dishonored for non-payment and returned to the agency at Amherst, who transferred it to A. without any indorsement being made other than those already on the bill. Held, that the bill, having been specially indorsed to the bank, could not be transferred except by indorsement. *Forsyth v. Lawrence*, 7 R. & G. 148; 7 C. L. T. 174.

§ 31.

4. Attachments of negotiable paper in the hands of the maker cannot restrain its negotiability, provided the transfer be made before maturity and in good faith. *Gibson v. Hine*, 14 Louis. 129; *Kimball v. Plant*, 14 id. 511.

5. A draft or order, not negotiable in its form, becomes negotiable if it be accepted payable to the order of the payee. *Crosby v. Hearth*, 15 Louis. 314.

6. The negotiability of a bill is not affected by the fact that it shows on it the nature of the consideration. *Canal Bank v. Holland*, 5 La. An. 364; *Mawrin v. Chambers*, 16 Louis. 207.

7. In Louisiana and France, the indorsement of a bill operates a transfer of any mortgage or security given to secure its payment. *Auguste v. Renard*, 3 Robinson, 389; *Burthe v. Donaldson*, 15 Louis. 382; *Bédarride*, art. 187. The same rule prevails in all the States of the Union. *Randolph*, § 731, 732, 1675. But in England, Quebec and the other provinces, it would seem that a separate transfer or assignment would be necessary. See section 23, n. 5, and notes under that section. See also notes under section 53.

8. Where a note is made payable to A. or bearer, and A. indorses it, though the indorsement is not necessary for the purpose of transfer, yet A. will be liable on his indorsement. *Booth v. Barclay*, U. C., 6 Q. B. 215; *Wilcocks v. Tinning*, U. C., 7 Q. B. 372; *Scott v. Douglass*, 5 O. S. 207; *Steer v. Adams*, 6 O. S. 60.

9. When a note made payable to A. or bearer was afterwards indorsed by C. and delivered by the latter to A., C. was held liable as an indorser. *Vandenden v. Vandusen*, U. C., 7 Q. B. 176; *Ramsdell v. Telfer*, U. C., 5 Q. B. 508. See section 56.

10. The holder of a bill payable to order transfers it to D. for value without indorsing it. D. cannot sue the acceptor in his own name, or negotiate the bill by indorsing it to E. *Harrop v. Fisher*, 10 C. B. N. S. 203; *Cunliffe v. Whitehead*, 3 Bing. N. C. 830; *Edge v. Bumford*, 31 L. J. Ch. 805.

11. A. draws a bill on B. payable to his own order. B. accepts. A. discounts the bill with C., but by mistake or fraud omits to indorse it. C. indorses the bill in blank in A.'s name, and sues B. C. cannot recover; he had no right to indorse the bill. *Harrop v. Fisher*, 10 C. B. N. S. 196; 30 L. J. C. P. 283.

12. C., the holder of a bill payable to order, transfers it for value to D. without indorsing it. If C. becomes bankrupt, the Court will compel his trustee in bankruptcy to indorse the bill. *Ex parte Mowbray*, 1 Jac. & W. 428. *Ex parte Rhodes*, 3 Mont. & Ayr. 217.

13. If C. dies, the Court will compel his executor or administrator to indorse. *Watkins v. Maule*, 2 Jac. & W. 243.

14. The holder who takes proceedings under the Insolvent Debtors' Act of New Brunswick, 21 Vict., c. 17, may yet transfer his bill, notwithstanding the publication of the notice calling a meeting of the

§ 32. creditors or a deed of composition under the Act. *Campbell v. Gilbert*, 1862, *Stev. Dig.*

Requisites of
a valid in-
dorsement.

32. An indorsement in order to operate as a negotiation must comply with the following conditions, namely:—

(a) It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient;

An indorsement written on an allonge, or on a "copy" of a bill issued or negotiated in a country where "copies" are recognized, is deemed to be written on the bill itself;

(b) It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not operate as a negotiation of the bill;

(c) Where a bill is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others;

Misspelling.

(2) Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is misspelt, he may indorse the bill as therein described, adding his proper signature; or he may indorse by his own proper signature;

Order of in-
dorsement.

(3) Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved;

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(4) An indorsement may be made in blank or special. It may also contain terms making it restrictive. § 32.
Special indorsement.

See section 35.

Where there are two or more indorsements:—

1. The order of signatures by indorsement upon a bill is a mere presumption of the understanding of the indorsers which may be rebutted by evidence, oral or written, of a contrary understanding. *Day v. Senthorpe*, 11 L. C. R. 269; *Scott v. Quebec Bank*, 7 L. N. 343; *Léveillé v. Daigle*, 2 Q. B. R. 129; *Scott v. Turnbull*, 6 L. N. 397; *Laurent v. Mercier*, 3 Q. B. R. 35; *Deschamps v. Léger*, M. L. R., 3 S. C. 1; *Willett v. Court*, 6 L. N. 204; *Elder v. Kelly*, U. C., 8 Q. B. 240; *Modatt v. Rees*, U. C., 15 Q. B. 527; *Janson v. Paxton*, U. C., 23 C. P. 439; *Wordsworth v. MacDougall*, U. C., 8 C. P. 403; *Blain v. Oliphant*, U. C., 18 Q. B. 244; *Foster v. Farewell*, U. C., 13 Q. B. 449; *Small v. Riddell*, 31 C. P. 373; *Nolte v. Creditors*, 7 Martin, N. S. 12, 499.

2. And this contrary understanding may be inferred from facts and circumstances attendant upon the making, issue and transference of the bill. *Macdonald v. Whitfield*, P. C., 8 App. Cas. 744; *Reynolds v. Wheeler*, 10 C. B., N. S. 561. *Janson v. Paxton*, U. C., 23 C. P. 439; and *Macdonald v. Magruder*, 3 Peters 470, overruled.

The following illustrations are from Chalmers, pp. 95 to 98:—

3. C., the holder of a bill, signs it and writes thereon, "I hereby assign this draft and all benefit of the money secured thereby to D." This is an indorsement by C. *Richards v. Frankum* (1840), 9 C. & P. at p. 225.

4. C., the holder of a note, signs it and writes thereon, "I bequeath—Pay the within to D, or his order, at my death." and gives it to D. This is not an indorsement, but an attempted testamentary gift, invalid under the Wills Act. *Mitchell v. Smith* (1864), 33 L. J. Ch. 596.

5. An express promise in writing to indorse a bill is not an indorsement. *Cf. Harrop v. Fisher* (1861), 10 C. B. N. S. at p. 204; 30 L. J. C. P. 286.

6. The assignment of a note by a separate writing is not an indorsement. *Re Barrington* (1804), 2 Scho. & Lef. 112; *Cf. Ex parte Harrison* (1789), 2 Brown C. C. 614.

7. An indorsement on the face of a bill is valid. *Harrop v. Fisher* (1861), 10 C. B. N. S. 203; *Cunliffe v. Whitehead* (1837), 3 Bing. N. C. 830; *Edge v. Bumford*, 18 2, 31 L. J. Ch. 805.

8. C., the holder of a bill for £100, indorses it, "Pay £50 to D. or order, and £50 to E. or order." This is invalid. Neither D. nor E. can sue or further indorse. *Cf. Heilbut v. Nevill* (1869), L. R., 4 C. P. at p. 358; *Conova v. Earl* (1868), 26 Iowa 169. See Nougner, §665.

9. C., the holder of a bill for £100, indorses it, "Pay D. or order £30." This is invalid, unless C. also acknowledges the receipt of £70. *Hawkins v. Cardy* (1699), 1 Id. Raym. 360.

10. A partial indorsement, purporting to split the right of action on a bill, is invalid as a negotiation, but may operate as an authority to

§ 33. receive payment of the amount thereby specified. *Willis v. Barrett*, 2 Stark, 29.

11. Bill payable "to the order of C. and D." E. alone indorses it to E. This is insufficient. E. cannot sue the acceptor. *Cavick v. Vickery* (1781), 2 Dougl. 652; Cf. *Heilbut v. Nevill* (1869), L. R., 4 C. P. at pp. 356, 358, per Willes, J.

12. Bill payable "to the order of C. and D." C. with D.'s authority indorses it "for self and D." This is sufficient.

13. Bill payable to "C. and D., or the order of either of them." C. alone indorses it. This is sufficient. *Watson v. Evans* (1863), 32 L. J. Ex. 137.

Conditional indorsement.

33. Where a bill purports to be indorsed conditionally, the condition may be disregarded by the payer, and payment to the indorsee is valid, whether the condition has been fulfilled or not.

See section 11 (2).

It was formerly held that if a bill was indorsed conditionally, the acceptor paid it at his peril if the condition was not fulfilled. *Robertson v. Kensington*, 4 Taunt. 30. Settled otherwise by the above section.

Indorsement in blank.

34. An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer;

Special indorsement.

(2) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable;

Application of Act to indorsee.

(3) The provisions of this Act relating to a payee apply, with the necessary modifications, to an indorsee under a special indorsement;

Conversion of blank indorsement.

(4) Where a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person.

See section 6.

1. An indorsement to pay the trustees of an insolvent firm, without naming them, is sufficiently certain, on showing who they are and that they act in that capacity. *Auldjo v. McDougall*, 3 O. S. 199.

2. The holder of a bill indorsed by C. in blank writes over C's signature the words, "Pay to the order of D." This is a special indorse-

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ment from C. to D. *Vincent v. Horlock*, 1 Camp. 442, *Hirschfield v. Smith*, L. R., 1 C. P. 340. § 35.

3. The holder may at any time strike out any indorsement which is not necessary to his title, and the indorser and all subsequent indorsers are discharged. *Mayer v. Jadis*, 1 M. & Rob. 247. See section 63.

4. *Aliter* if the indorsement be struck out by mistake. *Wilkinson v. Johnson*, 3 B. & C. 428.

35. An indorsement is restrictive which prohibits the further negotiation of the bill, or which expresses that it is a mere authority to deal with the bill as thereby directed, and not a transfer of the ownership thereof, as, for example, if a bill is indorsed "Pay D. only," or "Pay D. for the account of X," or "Pay D., or order, for collection;"

(2) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorizes him to do so; Restrictive indorsement
Right of indorsee thereunder.

(3) Where a restrictive indorsement authorizes further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement. If further transfer is authorized.

See section 32.

1. When a bill is drawn payable to the order of A. for the use of B., it cannot be transferred for the benefit of any other than B., and the indorsee is bound to see that the money he pays is applied according to the trust stated in the bill. *Munro v. Cox*, U. C., 30 Q. B. 363. See crossed cheques, section 75.

2. But if the trust or restriction does not appear upon the face of the instrument, it would be no defence as against a holder *bonâ fide* for value, without notice. *Kerr v. Straat*, U. C., 8 Q. B. 83; *Austin v. Farmer*, U. C., 30 Q. B. 10.

3. Bill indorsed "Pay D. for my account." D. cannot by indorsing it to E. authorize E. to collect it. *Aliter* if the indorsement ran, "Pay D. or order for my account." *Lloyd v. Sigournay*, 5 Bing. 532.

§ 36.

4. A cheque payable to a certain person or bearer is equivalent to a cheque payable simply to bearer. *The Exchange Bank v The Quebec Bank*, M. L. R., 6 S. C. 10.

5. The negotiability of such a cheque cannot be restricted by endorsement, and the bearer thereof has a sufficient title to demand and receive payment thereof. *Ibid.* But otherwise by sections 35, 36 and 75.

According to Chalmers, p. 104, the following indorsements have been held restrictive:—

6. "Pay D. or order for the use of X." *Evans v. Cramlington*, 1 Show. 4; 2 Show. 509, Ex. Ch.

7. "Pray pay the money to my use." *Snee v. Prescott*, 1 Atk. 249.

8. "Pay the contents to my servant for my use." *Edie v. East India Co.*, 2 Burr. 1227.

9. "The within must be credited to D., value in account." *Ancher v. Bank of England*, 2 Dougl. 637.

10. "Pay the contents to my use," or "Pay the contents to the use of X," or "Carry this bill to the credit of X." Cf. *Rice v. Stearns*, 3 Mass. 226.

11. "Pay D., or order, for our use, value received in account." *Wilson v. Holmes*, 5 Mass. 543.

12. "Pay D., or order, for the account of X." *Treuttel v. Barandon*, 8 Taunt. 100; *Blaine v. Bourne*, 23 Amer. R. 431.

13. "Pay D., or order, for my use." *Sigourney v. Lloyd*, 8 B. & C. 622; affirmed, 5 Bing. 525.

14. "Pay to the order of D. & Co., under provision for my note in favor of X." *Wedlake v. Hurley, Lloyd & Welsby*, 330; 1 C. & J. 83.

15. "Pay D. & Co., or order, for collection." *Sweeney v. Easter*, 1 Wallace 166, Sup. Ct. U. S.; *Merchants' Bank v. Henson*, 53 Amer. R. 5.

16. C. indorses a bill "Pay D. or order for my use." D. indorses it to, and discounts it with, E. on his own account. E. collects it at maturity. C. can recover the amount of the bill from E. *Sigourney v. Lloyd*, 8 B. & C. 622; affirmed, 5 Bing. 525, Ex. Ch.

17. C. indorses a bill "Pay D. or order for the use of X." D. collects the bill at maturity. If he misappropriate the money, X. cannot sue him. *Wedlake v. Hurley, Lloyd & Welsby*, 330; 1 C. & J. 83.

18. The action must be brought by C. *Sweeney v. Easter*, 1 Wallace 166, Sup. Ct. U. S.; *Merchants' Bank v. Henson*, 53 Amer. R. 5.

19. C. indorses a bill "Pay D. or order for account of X." D. is X.'s agent. D. indorses the bill to E., who collects it. X. can sue E. for the amount so received. *Potts v. Reed*, 6 Esp. 57; *Murrow v. Stuart*, 8 Moore, P. C. 267.

20. A. draws a bill on B., and indorses it to C. C. indorses it, "Pay D. or order for my use." The bill is dishonored, and D. sues A. the drawer. If A. have any defence against C. he may set it up against D. *Buckley v. Jackson*, L. R., 3 Ex. 135.

When negotiable bill ceases to be so

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continues to be negotiable until it has been (a) § 36.
restrictively indorsed, or (b) discharged by pay-
ment or otherwise ;

(2) Where an overdue bill is negotiated, it can ^{Negotiation of overdue bill.} be negotiated only subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which had the person from whom he took it ; ⁽¹⁾

(3) A bill payable on demand is deemed to be <sup>When bill deemed over-
due.</sup> overdue within the meaning and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time ; what is an unreasonable length of time for this purpose is a question of fact ; ⁽²⁾

(4) Except where an indorsement bears date <sup>Presumption as to negotia-
tion.</sup> after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue ;

(5) Where a bill which is not overdue has been <sup>Taking bill subsequent to
dishonor.</sup> dishonored, any person who takes it with notice of the dishonor takes it subject to any defect of title attaching thereto at the time of dishonor ; but nothing in this sub-section shall affect the rights of a holder in due course.

See sections 10, 28, 29, 38, 45 and 59.

1. A bill of exchange is negotiable *ad infinitum* until it has been paid by, or discharged on behalf of, the acceptor. *Callow v. Lawrence*, C. B. N. S. 597.

2. A note having at the time of its issue an indorsement that it was not to be sold cannot be indorsed. *Wilson v. McQueen*, 1 Ont. Dig. 491.

(1) See section 38 and art. 2287 of the Quebec Code.

(2) See section 85.

§ 36. *Where an overdue bill is negotiated:—*

3. A bill payable otherwise than on demand is overdue after the expiration of the last day of grace. Cf. *Leftley v. Mills* (1791), 4 T. R. 170.

4. It is no defence to an action by indorsee against the maker of a note, that a prior indorsee, while the holder, and before the plaintiff took it, recovered a judgment against the defendant and payee, and that the note was indorsed to the plaintiff when it was overdue. *McLennan v. McMonies*, U. C., 28 Q. B. 114.

5. Where an overdue note has been retired by the substitution of a renewal note, it is cancelled and cannot be put in circulation again even by the payee, who has taken up the renewal note out of his own funds. *Cuvillier v. Fraser*, U. C., 5 Q. B. 152.

6. If a promissory note is indorsed over as a security for advances only, the holder is subject to the same equities as the payee. *Estabrooks v. McKenzie*, *Steven's Digest*, N. B. Reports, 78.

7. Where after maturity the maker supplied the holder and others with board, etc., the value of which it was agreed should be applied in payment or reduction of the note. Held (reversing the judgment of the County Judge), that a subsequent transfer of the note could only be made subject to the claim of the maker for such board, etc., and that such claim was an equity which attached to the note in the plaintiff's hands. *Ching v. Jeffery*, 12 A. R. 432.

Semble.—A note payable on demand is, after demand of payment and refusal, to be treated as overdue. *Dongan v. Small*, 2 Kerr 89. See also *McCalmont v. Clarke*, 2 Kerr 98.

8. The indorsee of an overdue note takes it subject only to such equities as attach to the bill itself in the hands of the holder, when it falls due, and such indorsee would not be affected by a collateral matter like a set-off, due from the endorser to the maker. *Wood v. Ross*, U. C., 8 C. P. 299; *Kerr v. Straat*, U. C., 8 Q. B. 82; *Ferguson v. Stewart*, U. C., 2 L. J. 116; *Thomas v. McLeod*, 1 Han. 588; *Amazon Ins. Co. v. Quebec and Gulf Ports Steamship Co.*, 2 Q. L. R. 310. Req. 9th July, 1867, D. 68, 1, 72; *Miller v. Streeder*, 18 An. 56; Req. 12th January, 1869, D. 72, 1, 125.

The following objections have been held to be defects of title:—

9. An agreement to give time to the maker. *Britton v. Fisher*, U. C., 26 Q. B. 338.

10. An agreement not to be liable. *McQuinn v. Sorrell*, N. B., 2 A. 140.

11. An agreement not to negotiate a note after maturity. *Grant v. Winstanley*, U. C., 21 C. P. 257.

12. A payment after maturity by the payee of a note signed for his accommodation. *Pyper v. McKay*, U. C., 16 C. P. 67.

13. A payment after maturity by the payees of a note signed for the joint accommodation of makers and payees in their joint and common enterprise. *Small v. Riddell*, U. C., 31 C. P. 373.

14. The want of authority of an agent who has endorsed the note. *West v. MacInnes*, U. C., 23 Q. B. 307.

15. All the objections of the endorser when the holder is his *prête-nom* or agent. *Brooks v. Clegg*, 12 L. C. R. 461; *Small v. Riddell*, U. C., 31 C. P. 373. See section 30, n. 6.

The following illustrations are from Chalmers, p. 106:—

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16. Note payable to C.'s order made for an illegal consideration. C. indorses it, when overdue, to D. D. cannot recover from the maker, *Amory v. Meryweather* (1824), 2 B. & C. 573. § 37.

17. Bill obtained from the drawer for a special purpose. C, in fraud of that purpose, indorses the bill when overdue to D. D. cannot recover from the acceptor. *Lloyd v. Howard* (1850), 15 Q. B. 995.

18. Bill payable to drawer's order is accepted subject to a certain condition then agreed on between drawer and drawee. The drawer indorses the bill when overdue to C. C. takes the bill subject to the agreed condition, though he had no notice of it. *Holmes v. Kidd* (1858), 28 L. J. Ex. 112, Ex. Ch.

19. Bill accepted for an illegal consideration. The drawer indorses it before maturity to C., who takes it for value and without notice. C. indorses the bill when overdue to D. D. can sue all parties, for C. had a good title. *Chalmers v. Lanion* (1808), 1 Camp. 383; *Fairelough v. Pavia* (1854), 9 Exch. 690; Cf. sect. 29 (3).

20. The holder of a bill is indebted to the acceptor, *v. g.*, for rent. If, then, he sues the acceptor, the arrears of rent can be set off; but if he indorses the bill when overdue to D. for value, the acceptor has no right of set-off against D. *Oulds v. Harrison* (1854), 10 Exch. 572; *Ex parte Swan* (1868), L. R., 6 Eq. 344.

21. The manager of the "X. Bank" abstracts moneys belonging to the bank, and purchases therewith an overdue bill of exchange, which he negotiates to D. The "X. Bank," and not D., is entitled to the bill, and can prove against the acceptor's estate if he become bankrupt. *Ex parte Oriental Bank* (1870), L. R., 5 Ch. 358; Cf. *Lee v. Zagury* (1817), 8 Taunt. 114; and, by analogy, *Re Gomersall* (1875), 1 Ch. D. 137. As to the limits of the principle that the rights of a person not a party to the bill may constitute an equity attaching to it. See *Warren v. Haigh* (1875), 65 New York R. 171.

22. A bill payable three months after date is accepted to accommodate the drawer. After the bill is overdue the drawer indorses it to C. for value. C. can recover from the acceptor. *Stein v. Yglesias* (1834), 1 C. M. & R. 565.

37. Where a bill is negotiated back to the drawer, or to a prior indorser, or to the acceptor, such party may, subject to the provisions of this Act, re-issue and further negotiate the bill, but he is not entitled to enforce the payment of the bill against any intervening party to whom he was previously liable.

Negotiation of bill to party already liable thereon.

See section 59.

1. A bill was paid after maturity by the drawer, who waived protest, etc., and who immediately indorsed it. Held, that he was liable to the indorsee jointly and severally with the acceptor. *Hovey v. Nolin*, 18 R. L. 439.

The following digest of cases is from Chalmers, at page 109:—

2. Bill payable three months after date is indorsed by the holder to

§ 38. the acceptor. At any time before maturity the acceptor may re-issue the bill and indorse it away. *Attenborough v. Mackenzie* (1856), 25 L. J. Ex. 244.

3. The drawer of a bill payable to drawer's order indorses it to C., who indorses it to D., who indorses it back to the drawer. The drawer, either before or after its maturity, may re-issue the bill and indorse it to E. Cf. *Hubbard v. Jackson* (1827), 4 Bing. 390; *Jones v. Broadhurst* (1850), 9 C. B. 173. This is subject to sect. 59 (2), (3).

4. The drawer of a bill payable to drawer's order indorses it for value to C., who indorses it to D., who indorses it back to the drawer. The drawer cannot recover from C. or D., for they in turn could recover from him as drawer. Cf. *Bishop v. Hayward* (1791), 4 T. R. 470; *Wilders v. Stevens* (1846), 15 L. & W. at p. 212.

5. The payee of a bill indorses it "without recourse" to D., who indorses it to E., who indorses it back to the payee. The payee, in his character of third indorsee, can sue D. and E., for they have no claim against him as a prior indorser. Cf. *Morris v. Walker* (1850), 15 Q. B. at p. 594. There is here no circuity of action.

6. The drawer of a bill indorses it to C., who has previously undertaken to be responsible for the price of goods supplied to the acceptor. C. indorses the bill back to the drawer. The drawer, in his character of indorsee, can sue C., for C. has no remedy over against him. *Wilkinson v. Unwin* (1881), 7 Q. B. D. 636, C. A.

See sections 23, 27, 30 and 31.

Rights of the holder.

38. The rights and powers of the holder of a bill are as follows:—

- (a) He may sue on the bill in his own name;
- (b) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill;
- (c) Where his title is defective, (1) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and (2) if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill.

See sections 23, 27, 30 and 31.

1. The holder of a non-negotiable bill indorsed twice has his recourse against his indorser, but not against anterior parties. *Jones v. Whitby*, 9 L. C. R. 191.

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2. He has no better title than the original holder. *Marks v. Whalis*, 21 La. An. 140.

§ 38.

3. Although the note was not negotiable, the bank, in equity, was entitled to recover, it being shown that the note was intended by the makers to have been made negotiable and was issued by them as such, but by mistake or inadvertence it was not expressed to be payable to the order of the payees. *Harvey v. Bank of Hamilton*, Ca. 16, S. C., 714; 9 A. R. 655. See *supra*, section 31.

4. The holder need not prove the identity of the parties on the bill. *McCullough v. Shields*, 3 Kerr. 391.

The following illustrations are from Chalmers, pp. 112-113:—

5. When the holder of a bill sues as agent for another person, or when he sues wholly or in part for the benefit of another person, any defence or set-off available against that person is available *pro tanto* against the holder. *Lee v. Zagury* (1817), 8 Taunt. 114; *Royce v. Barnes* (1846), 52 Massachusetts. 276; *Agra Bank v. Leighton* (1866), L. R., 2 Ex. 56; *Re Anglo-Greek Navigation Co.* (1869), L. R., 4 Ch. 174; *Pothier*, No. 41; *Bechervaise v. Lewis* (1872), L. R., 7 C. P. 372.

6. C., the holder of a bill, indorses it to D. for collection. D. can sue on it, but any defence available against C. is available against D. *De La Chaumette v. Bank of England* (1829), 9 B. & C. 208, as explained by *Currie v. Misa* (1875), L. R., 10 Ex. at p. 164, Ex. Ch.

7. D. is the holder of a dishonored bill for £100 indorsed by C. C. pays D. £60. D. sues the acceptor. As to £60 D. sues as trustee for C., and only as to £40 on his own account. As regards £60, any set-off which the acceptor may have against C. is equally available against D. *Thornton v. Maynard* (1875), L. R., 10 C. P. 695.

8. Where a person holds a bill as agent or trustee for another, he cannot use it as a set-off against a claim made against him individually. *London & Bombay Bank v. Narraway* (1872), L. R., 15 Eq. 93.

9. Subject to the rules as to transmission by act of law, when a bill is payable to a particular person or persons, or to his or their order, an action thereon must be brought in the name of such person or persons. *Attwood v. Rattenbury* (1822), 6 Moore, at p. 583; *Pease v. Hirst* (1829), 10 B. & C. 122.

10. A bill is specially indorsed to the firm of "D. & Co." An action on it must be brought in the name of the firm. The managing partner cannot sue on it in his own name.

11. A bill is specially indorsed to D., a partner in the firm of X. & Co., in payment of a debt due to the firm. An action on it must be brought in D.'s name, and not in the name of the firm. *Bawden v. Howell* (1841), 3 M. & Gr. 638.

12. C., the holder of a bill, indorses it in blank to D. to collect it for him. Either C. or D. may sue the acceptor. *Clerk v. Pigot* (1699), 12 Mod. 193; Cf. *Stones v. Butt* (1834), 2 Cr. & M. 416.

13. A bill accepted by B. is indorsed in blank by C. D. E. and F., bring an action on the bill against B. They can recover, although there is no evidence to show that they are partners or what the nature of their joint interest is. *Ord v. Portal* (1812), 3 Camp. 239; Cf. *Rondasuz v. Leach* (1816), 1 Stark. 446; *Low v. Copestake* (1828), 3 C. & P. 300.

§ 38. 14. A bill is indorsed in blank to a firm. Any one of the partners may bring an action on it in his own name. *Lindley*, 3rd ed., p. 485; *Attwood v. Rattenbury* (1822), 6 Moore, 579; *Wood v. Connop* (1843), 5 Q. B. 292, as to joint holders; *Conover v. Earl* (1868), 26 Iowa R. 168, as to holders in common.

15. A bill indorsed in blank is handed to the manager of a company in payment of a debt due to the company. The manager may sue on it in his own name. *Law v. Parnell* (1859), 7 C. B. N. S. 282.

16. A bill indorsed in blank is given to D.'s attorney, who commences an action on it against the acceptor in D.'s name. D. knows nothing of the matter, but after the action has proceeded some way he is told of it, and then gives his consent. D. can maintain the action. *Ancona v. Marks* (1862), 31 L. J. Ex. 163.

17. D., the holder of a bill indorsed in blank, does not wish to sue on it in his own name. He accordingly asks E. to sue on it. E. consents. E. gets a copy of the bill, and it is agreed that he shall have the original when wanted. E. commences an action against the acceptor, and after action brought he gets the bill. E. cannot maintain this action, for at the time he began it he had neither the actual nor the constructive possession of the bill. *Emmett v. Tottenham* (1853), 8 Exch. 884; Cf. *Olcott v. Rathbone* (1830), 5 Wend. 490, New York.

18. A note payable to bearer is handed to the solicitor of a loan society in payment of a debt due to the society. D., a member of the society, instructs the solicitor to commence an action on it in his (D.'s) name against the maker. D. can maintain this action. *Jenkins v. Tongue* (1860), 29 L. J. Ex. 147.

Action by
holder.

When a bill is dishonored for non-acceptance or non-payment, the holder may enforce payment against all or any of the parties liable on the bill. Sections 38, 43 and 47. This right is peculiar to English and American law. Under the French and other continental codes, the holder can only protest the bill for non-acceptance, and demand security from the drawer and indorsers.

The Act, different in that respect from article 2310 of the Civil Code of Quebec, does not say whether they are jointly and severally liable; but undoubtedly, under that article they would be held so liable, at least in Quebec, and execution may issue against the members of the firm as well as against the firm at the same time. This is an exception to the ordinary rule, by which an obligation is not presumed to be joint and several, unless it is expressly declared to be so, or unless it is of a commercial nature. C. C. Art. 1105. Therefore, partners in a commercial firm are liable jointly and severally.

In Ontario, parties to a bill or note other than joint makers or joint indorsers are liable jointly and severally, Rule 300 of the Judicature Act. Partners are liable jointly only; but after judg-

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ment execution may issue against them individually in certain cases provided for in Rule 876 of the same statute. § 38.

Conflicting decisions have been rendered in Quebec as to the nature of the liability of joint makers. In *Malhiot v. Tessier*, 1 R. C. 121, it was held that two farmers who signed a note were not jointly and severally liable; but in *Perrault v. Bergevin*, 14 R. L. 604, the contrary doctrine was maintained, and also in France, Req. 9 Dec., 1872, D. 73, 1, 238; Seine, 20 juin 1873, D. 74, 5, 181.

In Ontario, it has been held that a note signed by more than one person, and beginning, "We promise," is a joint note only; but a note signed by two persons, beginning, "I promise," is joint and several. *Creighton v. Fretz*, U. C., 26 Q. B. 627; see also *Thomas v. Grace*, U. C., 15 C. P. 462.

By section 84 of the Act, a note made by two or more is not joint and several, unless expressly declared to be so; but where a note runs, "I promise to pay," and is signed by two or more persons, it is deemed to be their joint and several note. Thus, the law of Quebec has been changed, and care should be taken hereafter that the note be expressed to be joint and several.

In actions founded upon bills of exchange, whether the defendants are traders or not, recourse must be had in matters of evidence to the laws of England, in force on the 30th of May, 1849. See section 95, C. C. L. C., Art. 2341. See Appendix.

In Quebec, the dishonor of a bill not only gives the holder a "right of action against all parties, but the indorser and all parties *garantie*." who stand as sureties or quasi-sureties may, even before paying, proceed against the principal debtor to be indemnified. This action is generally called an *action en garantie*, and is expressly given by article 1953 of the Quebec Civil Code. It is recognized by what may be considered a well settled jurisprudence. *Desbarats v. Hamilton*, 2 L. N. 277; *Macdonald v. Whitfield*, P. C., 8 App. cases, 733; *MacKinnon v. Keroack*, 15 Can. Sup. Ct. 111. But the exercise of this right of *action en garantie* must cause no delay to the holder in his own recourse. *Durocher v. Lapalme*, M. L. R., 1 S. C. 494; *Block v. Lawrence*, M. L. R., 2 S. C. 279; *Banque Nationale v. Ross*, 11 Q. L. R. 109, overruling *Beaulieu v. Demers*, 5 R. L. 244. Such is also the law of France, *Rej.* 24 floréal, an. 13, D. 5, 1, 371; 2 *Pard.* 333; 1 *Bédarride*, 299; *Dalloz*, Table de dix ans, Vo. Lettre de Change, nn. 140 and following; Code de Commerce, arts. 118, 165 and 167.

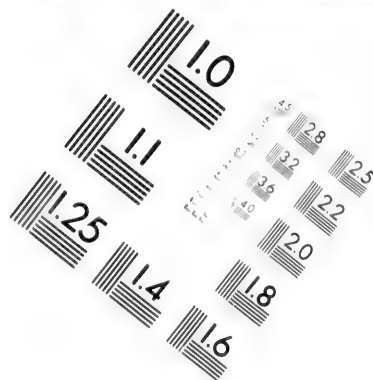
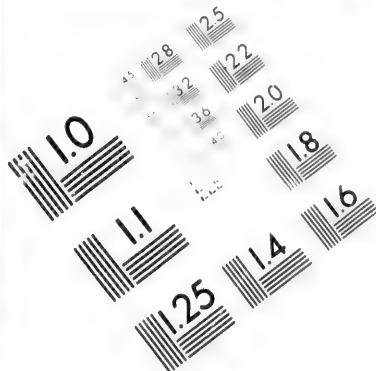
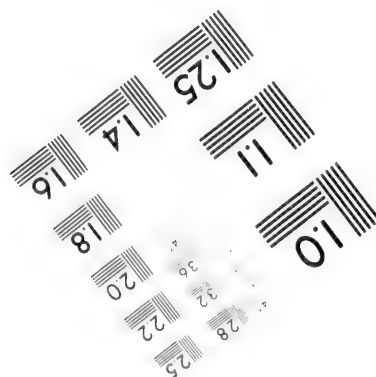
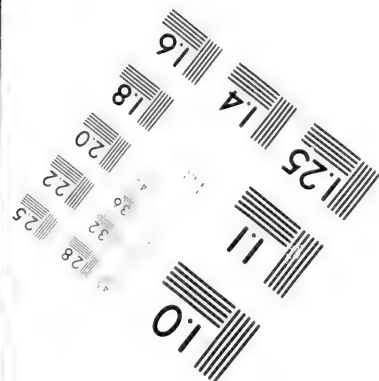
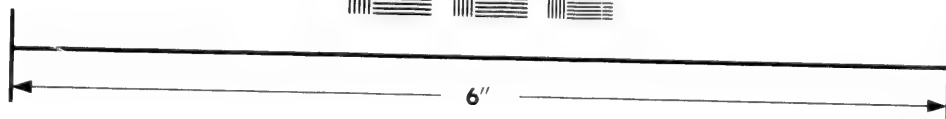
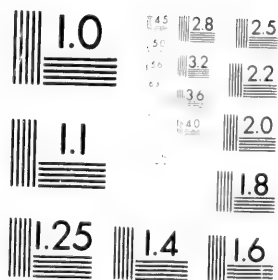


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§ 39.*General Duties of the Holder.*

When presentment for acceptance is necessary.

Express stipulation as to presentment.

No presentment in any other case.

Necessary delay for presentment.

39. Where a bill is payable at sight or after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument ; ⁽¹⁾

(2) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment ;

(3) In no other case is presentment for acceptance necessary in order to render liable any party to the bill ;

(4) Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers.

1. It is not necessary to present for acceptance a bill drawn payable after date, before it be due. *Richardson v. Daniels*, 5 O. S. 671. *Commercial Bank v. Perry*, 16 Robinson, 61.

2. Where a bill drawn on a shipment and payable a certain number of days after sight, is sold with the bill of lading appended to it, the holder of the bill of exchange cannot, in the absence of proof of any local usage to the contrary, or of the imminent insolvency of the drawee, require the latter to accept the bill of exchange but on the delivery of the bill of lading; and where, in consequence of the refusal of the holder to deliver the bill of lading, acceptance is refused

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and the bill protested, the protest will be considered as made without cause, the drawee not having been in default, and the drawer will be discharged. *Lanfear v. Blossman*, 1 La. An. 148.

§ 39.

3. Defendants authorized an agent to make certain purchases for their account, in these words: "We authorize you to purchase for our account to the extent, &c., and to ship to our order, and to forward to us the shipping documents, when your drafts for the invoice amount will meet with due honor." The agent, having purchased in conformity to his authority, drew on his principals for the amount of the invoice, and sold the bill of exchange with the bill of lading attached to it. Held, that the drawees were bound to accept only on delivery of the bill of lading. *Little v. Blossman*, 1 La. An. 169.

4. Where the holder of a bill of exchange, drawn on merchandise, at ten days' sight, and accompanied by a bill of lading, does not present it for acceptance according to its tenor, although the drawers were willing to accept upon delivery of the bill of lading, but demands immediate payment, and, on their refusal, transfers the merchandise represented by the bill to another house, the drawer will be discharged. *Benoist v. Reyburn*, 2 La. An. 137.

5. The object of the rule under which the drawee is entitled to twenty-four hours (1) to consider whether he will accept is not to enable him to inquire as to the holder's title, but to ascertain whether he has effects of the drawer, or the prospect of them, or other reasons for honoring the bill; and the acceptance of a bill at once, without taking advantage of this delay, is not of itself evidence of negligence or incaution, in not enquiring as to the title of the holder. *Wilcox v. Beal*, 3 La. An. 404.

6. Where an agent is authorized to ship to his principal and to draw on him "with bill of lading attached," it is unimportant that the latter be fastened to the bill of exchange. It is sufficient that the bill of lading be delivered with it to the purchaser. *Foreman v. Walker*, 4 La. An. 409.

After a bill of exchange has been handed to the payee, or his indorsee, it is always in the interest of the holder, and at times even indispensable, that it be presented for acceptance. When the bill is payable at sight, or at one or several usances or days after sight, its presentment to the drawee is absolutely necessary, in the former case in order to fix the last day of grace and that of presentment for payment, and in the latter to determine the time of maturity in accordance with the tenor of the instrument. The expression *at sight* does not, as a matter of fact, mean that the bill is payable on demand, as under the old French law and the English Act, but that it is payable three days after presentation, sections 10 and 39; and the expression, *so many days after sight*, means that the bill is payable so many days after acceptance, or after the refusal of the drawee to accept.

Presentment
for acceptance.

(1) Under the act the drawee has two days to accept. Sect. 42.

§ 39.

When the drawer stipulates that the bill be presented as soon as possible, presentment for acceptance is necessary.

Pothier remarks, that in the case of a bill being drawn under election of domicile, as where, for instance, A. of Nantes draws upon B. at Orleans, payable at Paris, the holder is bound to present it to the drawee, in order to be able to present himself at maturity at the domicile indicated. *Du Change*, n. 128. Such is the express provision of section 39, sub-sect. 2.

In no other case is presentment for acceptance necessary. It is in the interest of the holder to make it as soon as practicable, even before putting the bill in circulation, in order to secure the additional guarantee of the acceptor; but he is not bound so to do, for maturity is settled by the bill, and the drawer and endorsers cannot expect the instrument to be presented to the drawee before maturity.

When and
where.

What is the nature of the diligence to be observed in presentment for acceptance? There is no delay strictly prescribed by law. The holder should observe reasonable diligence, and present himself as soon as practicable, that it is to say, within a reasonable time,—distance, accidents, and all other events excusing delay on his part considered. 2 Savary, *Parère* 17, 154; Byles on Bills, nn. 131 and 132, p. 158; section 40 of the Act.

With regard to the formalities to be complied with in presentment for acceptance, the latter must be made to the drawee, or his agent, at the address given, or at his domicile, or his ordinary business place, and during business hours. If the drawee be dead or bankrupt, presentment is excused, and the bill may be treated as dishonored by non-acceptance, or it may be made to his representative, sect. 41, subs. 1 (c) and 2 (a). If the drawee be absent, acceptance should then be requested at his last known domicile or place of business, and if after diligent research he cannot be found, the bill may be regarded as dishonored.

A usage has crept into trade, allowing the drawee twenty-four hours to look into his accounts with the drawer, and to deliberate,—a custom which also prevails in England, France, and almost all countries. The bill is left in the hands of the drawee, to remain at his risk and peril until the day of acceptance; upon the expiration of the twenty-four hours, or unde

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§ 40.

the Act within two days after presentment, the holder must again present himself to the drawee, to receive the accepted bill, or establish the refusal to accept. The Canadian Act, sect. 42, has irrevocably fixed the delay within which the holder is bound to treat the bill as dishonored by non-acceptance. It is within two days and no more after presentment; it may be so treated on the very day of presentment. The protest should be made not later than on the second day after presentment. According to the English Act, it must be done "within the customary time." Sect. 42.

If the bill indicate to the holder a drawee *au besoin*, he may, "Besoin." if he thinks fit, present himself to the latter, but only after protest, as prescribed by sections 15 and 64. Under article 2290 of the Quebec Code, and also in the United States, France and Europe generally, presentment to the drawee *au besoin* is necessary.

40. Subject to the provisions of this Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time;

Time for presenting bill payable after sight.

(2) If he does not do so, the drawer and all indorsers prior to that holder are discharged;

If not presented.

(3) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with similar respect to bills, and the facts of the particular case.

As to reasonable time.

See section 39.

Within a reasonable time:—

1. A bill made on the 27th August, indorsed by the payee on the 28th, presented by the holder on the 1st September and protested on the 8th September. This is not a reasonable time. *Harris v. Schwob*, 3 R. L. 453.

2. A bill drawn at sight in Toronto, on the 6th August, 1849 (when railway communications were few), by a party dealing in bills, upon a party in New York, in favor of a party in Illinois, was presented on the 10th November, 1849. This was not an unreasonable delay. *Boyes v. Joseph*, U. C., 7 Q. B. 505.

3. On the 8th October, 1868, in Halifax, the defendants indorsed a bill drawn by S. S. on E. & Co. of Liverpool. On the 5th Nov-

§ 41.

ember, the drawer sold the bill for full value to the plaintiff, who forwarded it the same day. It was accepted, but the acceptors failed before it matured. Held, that the time was reasonable. *Wylde v. Wetmore*, 1 N. S. D. 504.

The following digest of cases is from Chalmers, p. 123 :—

4. A. in Windsor draws a bill on B. in London, payable one month after sight. The holder keeps it for four days before presenting it for acceptance. It is then dishonored. This may not be an unreasonable delay. *Fry v. Hill* (1817), 7 Taunt. 397; *Cf. Shute v. Robins* (1828), 2 C. & P. 80.

5. A. in London draws a bill on B. in Rio, payable sixty days after sight. The payee holds it back for four months, during which time Rio bills are at a discount. He then negotiates it. This may not be an unreasonable delay. *Mellish v. Rawdon* (1832), 9 Bing. 416.

6. A. in Newfoundland draws a bill (*in a set*) on B. in London, payable ninety days after sight. The payee holds it back for two months, and then forwards it for presentment. No reason for holding back is shown. This may be an unreasonable delay. *Straker v. Graham* (1839), 4 M. & W. 721.

7. A. in Calcutta draws a bill on B. in Hong Kong, payable sixty days after sight. The holder retains it for five months, during which time China bills are at a discount. He then negotiates it. This may be an unreasonable delay. *Ramchurn Mullick v. Radakissen* (1854), 9 Moore P. C. 46; *Cf. Godfray v. Coulman* (1859), 13 Moore P. C. 11.

8. A. draws a bill on B., payable to C. three months after sight. C. holds it back for an unreasonable time. He then presents it, and it is accepted. Before it is due the acceptor fails. A. is (probably) discharged. *Straker v. Graham* (1839), 4 M. & W. 721.

9. Reasonable time is a mixed question of law and fact, and in determining it regard must be had to the interests of the holder as well as to the interests of the drawers and indorsers. *Ramchurn Mullick v. Radakissen* (1854), 9 Moore P. C. 47; *Wallace v. Agry* (1827), 4 Mason 336, Sup. Ct. U. S., per Story, J.

Rules as to
presentment
for acceptance.

41. A bill is duly presented for acceptance which is presented in accordance with the following rules :—

(a) The presentment must be made by or on behalf of the holder to the drawee or to some person authorized to accept or refuse acceptance on his behalf, at a reasonable hour on a business day and before the bill is overdue ;

(b) Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, when presentment may be made to him only ;

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43.

(a)

(1) See

(c) Where the drawee is dead, presentment § 42.
may be made to his personal representative ;

(d) Where authorized by agreement or usage,
a presentment through the post office is suffi-
cient ;

(2) Presentment in accordance with these rules Excuses for non-presentment.
is excused, and a bill may be treated as dishon-
ored by non-acceptance :—

(a) Where the drawee is dead or bankrupt, or
is a fictitious person or a person not having capa-
city to contract by bill ;

(b) Where, after the exercise of reasonable dil-
igence, such presentment cannot be effected ; ⁽¹⁾

(c) Where, although the presentment has been
irregular, acceptance has been refused on some
other ground ;

(3) The fact that the holder has reason to believe When there is no excuse.
that the bill, on presentment, will be dishonored
does not excuse presentment.

42. When a bill is duly presented for accept- Non-acceptance.
ance and is not accepted on the day of present-
ment or within two days thereafter, the person
presenting it must treat it as dishonored by non-
acceptance. If he does not, the holder shall lose
his right of recourse against the drawer and in-
dorsers.

Within the two days after presentment, the drawee must return
the bill accepted or non-accepted. Bank of Van Diemen Land *v.*
Victoria Bank, L. R., 3 P. C. 542. Non-business days must be ex-
cluded. See section 91.

43. A bill is dishonored by non-acceptance :— Dishonor by non-acceptance and its consequences.
(a) When it is duly presented for acceptance,

(1) See sections 39 and 40.

§ 44. and such an acceptance as is prescribed by this Act is refused or cannot be obtained ; or

(b) When presentment for acceptance is excused and the bill is not accepted ;

Recourse in such case.

(2) Subject to the provisions of this Act, when a bill is dishonored by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

The indorser, like the drawer of a bill of exchange, is liable to the holder the moment the drawee has refused acceptance, and the holder is not forced to wait until the bill has been presented for payment. *Ross v. Dixie*, U. C., 7 Q. B. 414 ; *Morgan v. Towles*, 8 Martin, 735 ; *Williams v. Robinson*, 13 Louis. 421 ; *Pecquet v. Mager*, 14 id. 74.

As to qualified acceptances.

44. The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonored by non-acceptance ;

If taken without authority.

(2) Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorized the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill ;

Partial acceptance.

The provisions of this sub-section do not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance ;

What shall be deemed assent.

(3) When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent

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to the holder, he shall be deemed to have assented thereto. (1) § 45.

45. Subject to the provisions of this Act, a bill ^{Presentment for payment.} must be duly presented for payment. If it is not so presented, the drawer and indorsers shall be discharged; (2)

2. A bill is duly presented for payment which ^{Rules as to presentment.} is presented in accordance with the following rules:—

(a) Where the bill is not payable on demand, presentment must be made on the day it falls due;

(b) Where the bill is payable on demand, then, subject to the provisions of this Act, presentment must be made within a reasonable time after its issue, in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable (3)

In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case; (4)

(c) Presentment must be made by the holder or by some person authorized; (5)

To receive payment on his behalf at the proper place, as hereinafter defined, either to the person designated by the bill as payer or to his represen-

(1) *Irwin v. Crooshank*, 2 Kerr, 399; *Rowe v. Young*, 2 Bingham, 391. See notes under section 19.

(2) Ord. of 1673, tit. 5, art. 16; 2 Savary, 343, 346; *The Bank of Montreal v. Ruston*, 1 L. C. R. 252; C. C. art. 2522.

(3) See section 86.

(4) See section 36.

(5) See section 29, sub-sect. 1.

§ 45. tative or some person authorized to pay or refuse payment on his behalf, if, with the exercise of reasonable diligence, such person can there be found;

(d) A bill is presented at the proper place:—

1. Where a place of payment is specified in the bill or acceptance, and the bill is there presented; ⁽¹⁾

2. Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill and the bill is there presented;

3. Where no place of payment is specified, and no address given, and the bill is presented at the drawee's or acceptor's place of business, if known, and if not, at his ordinary residence, if known;

4. In any other case, if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence;

(3) Where a bill is presented at the proper place, and after the exercise of reasonable diligence, no person authorized to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required;

(4) Where a bill is drawn upon, or accepted by, two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all;

(5) Where the drawee or acceptor of a bill is dead and no place of payment is specified, presentment must be made to a personal representa-

(1) *Darling v. Gillies*, 21 N. S. R. 423. See notes under section 49.

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tive, if such there is, and with the exercise of reasonable diligence he can be found; § 45.

(6) Where, authorized by agreement or usage a presentment through the post office is sufficient;

(7) Where the place of payment specified in the bill or acceptance is any city, town or village and no place therein is specified, and the bill is presented at the drawee's or acceptor's known place of business or known ordinary residence therein, and, if there is no such place of business or residence, the bill is presented at the post office, or principal post office in such city, town or village, such presentment is sufficient.

As to presentment to acceptor for honor or *au besoin*, see section 66.

1. The paper should be *presented* and exhibited when the demand for payment is made. *Masson v. Lake*, 4 Howard, 262; *Warren v. Briscoe*, 12 Louis. 472; *Venner v. Futvoye*, 13 L. C. R. 307, and *Ma cotte v. Falardeau*, Q. L. R. 296, should not be followed under the Act.

1a. The defendants gave a promissory note, which was indorsed in blank by the payee; after it was due it was in the hands of J., who demanded the payment of the defendants, but refused to produce it, and a few days afterwards told the defendants' agent, who offered to pay the note, that they should not have it, and he would give them a hint for it. The plaintiff was J.'s son, living in the house with him, and there was no proof of any actual transfer of the note by J. Held, that it might be inferred that the plaintiff was only the agent of J., and therefore that the jury were justified in finding a verdict for the defendants. *Jordan v. Coates*, N. B., 2 A. 107.

(a) *Presentment on the day it falls due* :—

The following have been held insufficient :—

1b. After the usual office hours of a bank, if payable at that bank. *Walters v. Raffenstein*, 16 L. C. R. 297; *Elford v. Teed*, 1 M. & S. 28; *Parker v. Gordon*, 7 East, 385; *Whitaker v. Bank of England*, 1 C. & R. 750.

2. If made at an unreasonable hour. *Patterson v. Topley*, N. B. A. 292; *Kinnear v. Goddard*, N. B., 4 A. 559; *Dana v. Sawyer*, 22 Me. 244; *Wallace v. Gwinn*, 15 Louis. 223; *Thomas v. Marsh*, 2 La. An. 353.

2a. In France, reasonable hour means any hour when civil process can be served. Cass. 23rd November, 1829, D. 30, 1, 118; 2 Pardessus, 296.

§ 45.

3. Presentment and protest, made on the 24th February, of a note maturing on the 11th, the holder having received the following memorandum from the indorser: "My note maturing the 10th instant, good for ten days after date." No other note existed. The presentment was sufficient. *Burnett v. Monaghan*, 1 R. C. 473.

(b) *Where the bill is payable on demand* :—

4. Presentment not necessary as against the maker; but if defendant tender the debt and interest in court, plaintiff will be condemned to pay costs. *Archer v. Lortie*, 3 Q. B. R. 159; *Shuter v. Paxton*, 5 L. C. J. 55.

5. Indorser of a note payable on demand responsible although not presented within a reasonable time. The court of review held the statute of limitations to be the only limit. *Dandurand v. Roulier*, 33 L. C. J. 167; *Merchants Bank v. Whitfield*, 2 Q. B. R. 157; *Jouisse*, Ord. de 1673, tit. 5, art. 4, n. 3; *Pothier*, n. 4; *Savary*, Par. 17; 4 *Alauzet*, 321. Otherwise by section 45, sub-sect. (b).

6. When a note is indorsed after maturity, the holder should first call on the maker to pay and give notice of dishonor to the indorser before he can proceed against the latter. *Davis v. Dunn*, U. C., 6 Q. B. 327. See section 10, sub-section (2) and n. 7.

7. A letter written by the attorney of the indorsee to the maker, stating that a note payable on demand, together with other notes, had been placed in his hands for collection, and requiring him to pay the interest and give new security for the principal, is not such a presentment of the note as would authorize the holder to treat the bill as dishonored, and at once resort to the indorser. *Thorne v. Scovell*, 2 Kerr, 557. See section 45 of the Act.

(c) *Presented at the proper place*. See section 46.

8. Presentment of a note at the maker's place of business is sufficient, although there is no person in charge at the time. *Kinnear v. Goddard*, N. B., 4 A. 559.

9. Presentment is regular if made at the particular place specified in the acceptance, and also at the business place of the acceptor. *Irwin v. Crooshank*, 2 Kerr, 399; see also *Sussex Bank v. Baldwin*, 2 Ha. 487.

10. The maker of a note was proved to have occupied an office up to the 1st May, after which there was no direct evidence of occupation, but his desk remained there as before. Held, in the absence of any proof of his having changed his office, that presentment of a note there after the 1st May was sufficient. *Kinnear v. Goddard*, N. B., 4 A. 559.

11. A note made payable at the residence of D., at Strathroy, does not require any special form of presentment, it being proved to have been on the day it matured with D. at that place. *Harris v. Perry*, U. C., 8 C. P. 407; *Etheridge v. Ladd*, 44 Barb. 69; *Bigelow*, 241.

12. Held, that as it was proved that the notes were in plaintiff's office, where they were made payable at the time they became due, no other proof of presentation was required. *Souther v. Wallace*, 20 N. S. R. (8 R. & G.), 509; *Wallace v. Souther*, 9 C. L. T. 210; 2 Ca. S. C. R. 598; *Chicopee Bank v. Philadelphia Bank*, 8 Wall. 241. See also *Pullen v. Sanford*, 4 R. & G. 242; *Biggs v. Wood*, 2 Ma. R.; *Brander v. Cobb*, 2 La. Am. 396. See section 46, n. 19. See n. 11 and also sect. 46, n. 19.

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13. In an action by the indorsees against the indorser of a promissory note the defendant pleaded, traversing the allegation of presentment. The messenger of the bank that held the note swore that he presented it at defendant's office, where it was payable, between 3 and 4 p. m., when said office was closed. The defendant denied the presentment and denied that the office was closed, but did not deny that he had been informed of the presentment next day, and he did not deny or refer to the statement of one of the plaintiffs, that on his showing the defendant the notice of dishonor the defendant had promised to give a good note in place of the dishonored one, or else supply goods to the amount of it. The County Court Judge set aside the plea as false, etc., on the strength of the uncontradicted evidence of this promise.

Held, on appeal, that the only question for the Court under the pleadings was whether the note had been actually presented, and that plaintiffs could not be said to have established the fact of presentment as there was a contradiction. *Evans v. Foster*, 1 R. & G. 66.

14. A promissory note drawn on Boston, where both the maker and payee resided, was made payable at any bank. Held, that this meant any bank in Boston. *Baldwin v. Hitchcock*, 1 Han. 310.

15. When a note is payable at a particular place, but the words "and not otherwise or elsewhere" are omitted, it is payable generally under the Ontario statute and also the English Act. Cons. St. U. C., C. 42, and the note might be presented at the place named or to the maker himself. *Bradbury v. Poole*, U. C., 1 Q. B. 442; *Commercial Bank v. Culvert*, U. C., 3 Q. B. 363; *Bank of U. C. v. Parsons*, U. C., 3 Q. B. 383; *Wilson v. Aitkin*, U. C., 5 C. P. 376; *Bank of U. C. v. Sherwood*, U. C., 8 Q. B. 116; *Meyer v. Hutchinson*, U. C., 16 Q. B. 476; *Hooker v. Leslie*, U. C., 27 Q. B. 295; *North-Western National Bank v. Jarvis*, 2 Ma. R. 53; *Grant v. Heather*, 2 Ibid. 201. Otherwise settled by section 45, sub-sect. 1. See also section 19.

16. The place of payment may be specified by the drawer. *Gibb v. Mather*, 2 Cr. & J. 254; *Walker v. Stetson*, 2 Amer. R. 405.

17. Or by the acceptor. *Saul v. Jones*, 28 L. J. Q. B. 37.

18. If alternative places of payment are specified, presentment at either of such places is sufficient. *Beeching v. Gower*, Holt N. P. C. 313; Cf. *Pollard v. Herries*, 3 B. & P. 335.

19. If a bill is made payable at a bank in a town where there is a clearing-house, presentment through the clearing-house is deemed to be a presentment at the bank. *Reynolds v. Chettle*, 2 Camp. 595; *Harris v. Parker*, 3 Tyr. 370; *Boddington v. Schlencker*, 4 B. & Ad. 762.

(3) *Reasonable diligence*:—

20. Whether due diligence has been used in the presentment of a bill of exchange to the drawee is a mixed question of law and fact; and where the question has been properly left to the jury, the court will not interfere with their verdict unless it clearly appears that they have come to a wrong conclusion. *Perley v. Howard*, 2 Kerr, 518. See also as to due diligence, *Patterson v. Topley*, N. B., 4 A. 529; *Mechanics Bank v. Walton*, 7 Robinson, 451.

The following illustrations are from Chalmers, p. 135:—

21. A bill is accepted "Payable at 1 Duke Street, London." The acceptor dies. Presentment at 1 Duke Street is sufficient without making search for the acceptor's executor. *Philpot v. Briant* (1827), 3 C. & P. 244; Cf. *Wilkins v. Jadis* (1831), 2 B. & Ad. 188.

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22. The acceptor of a bill accepts it payable at his banker's. The bill must be presented at the bank. A presentment to the acceptor personally is insufficient. *Gibb v. Mather* (1832), 2 Cr. & J. 254, Ex. Ch.; *Saul v. Jones* (1858), 28 L. J. Q. B. 37.

23. A bill is addressed to "Mr. B., 1 Duke Street, London." B. accepts it generally. The bill is presented at 1 Duke Street, and the house is found shut up. This is sufficient. *Hine v. Allely* (1833), 4 B. & Ad. 624; *Cf. Crosse v. Smith* (1813), 1 M. & S. at p. 554.

24. A bill is addressed to "Mr. B., 1 Duke Street, London." B. accepts it generally. The holder takes the bill to 1 Duke Street, and inquires for B. A woman living in the house informs him that B. has left. This is sufficient. *Buxton v. Jones* (1840), 1 M. & Gr. 83.

25. A bill is accepted payable at a bank. When the bill matures the bank is the holder of the bill, but the acceptor has no assets there. This is sufficient. No personal demand on the acceptor is necessary. *Bailey v. Porter* (1845), 14 M. & W. 44.

Excuse for
delay in pre-
sentment for
payment.

46. Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence;

(2) Presentment for payment is dispensed with:

(a) Where, after the exercise of reasonable diligence, presentment, as required by this Act, cannot be effected;

The fact, that the holder has reason to believe that the bill will, on presentment, be dishonored, does not dispense with the necessity for presentment;

(b) Where the drawee is a fictitious person;

(c) As regards the drawer, where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented;

(d) As regards an indorser, where the bill

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was accepted or made for the accommodation of § 46.
that indorser, and he has no reason to expect that
the bill would be paid if presented;

(e) By waiver of presentment, express or
implied.

Excuses for not presenting bill, etc.:—

1. The holder of a bill dies suddenly just before it matures. The circumstances may be such as to excuse delay. *Rothschild v. Currie*, 1 Q. B. 47. See also *Jex v. Tureaud*, 19 L. A. An. 64.

2. Bill drawn in England, payable at Leghorn. At the time the bill matures Leghorn is besieged. The holder is not in Leghorn. This excuses delay. *Patience v. Townley*, 2 Smith, 223. Irresistible power or *force majeure* is a good excuse. *Bank of Tennessee v. Bertsou*, 19 L. A. An. 72; *Labadie v. Landry*, 20 id. 149; *Rej.* 23rd February, 1831, D. 31, 1, 322; *Cass.* 14th Dec., 1824, D. 24, 1, 77; 4 *Alauzet*, 333.

3. Laws suspending the payment of bills in time of war apply to all parties and bills, whether foreign or national. *Rouen*, 12th March, 1873, D. 74, 2, 60; *Cass.* 6th March, 1872, D. 72, 2, 1 and 5; *Cass.*, 2nd April, 1873, D. 73, 1, 335; *Aix*, 9th April, 1872, D. 72, 2, 202.

4. Bill presented for payment through the post (see sect. 45 [8]). It is sent off in time to reach the drawee on the day of maturity, but by mistake of the post office is delayed some days. The delay is probably excused. *Windham Bank v. Norton*, 22 Connecticut R. 214; *Pier v. Heinrichschoffer*, 29 Amer. R. 501.

5. Bill drawn in England, payable in Paris. By a French moratorium law, passed in consequence of war, the maturity of bills payable in Paris is postponed three months. The delay in making presentment is excused. *Rouquette v. Overmann*, L. R., 10 Q. B. 525. See also *Patience v. Townley*, 2 Smith 223.

6. If presentment is delayed at the request of the drawer or indorser sought to be charged, the delay is presumably excused. *Lord Ward v. Oxford Railway Co.*, 2 De G. M. & G. 750.

7. Bill drawn on B. is accepted by an agent. At the time the bill matures, B. is abroad. This is no excuse, presentment should be made to the agent. *Philips v. Astling*, 2 Taunt. 206.

8. B. makes a note "Payable at Guilford." B. has no residence there. The bill is presented at two banks, and then treated as dishonored. This is sufficient. *Hardy v. Woodroffe*, 2 Stark. 319.

9. The drawer of a bill orders the acceptor not to pay it. The holder hears of this. Presentment is not dispensed with. *Hill v. Heap*, D. & R. N. P. C. 57; *Nicholson v. Gouthit*, 2 H. Bl. 609.

10. The acceptor of a bill informs the holder that he cannot, or will not, pay it when due. Presentment is not dispensed with. *Baker v. Birch*, 3 Camp. 107.

11. The acceptor of a bill becomes bankrupt before it matures. Presentment is not excused. *Esdaille v. Severly*, 11 East. 117; *Rej.* 3rd Dec., 1806, D. 7, 1, 15; *Cass.* 15th January, 1820, D. 20, 1, 52 See *infra*, n. 24.

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11a. Likewise the insolvency of the indorser does not dispense with notice of dishonor. *Rouen*, 14th November, 1876, S. 77, 2, 253.

12. B. makes a note payable at "1 X. Street, London." Before it becomes due he becomes insolvent and absconds. Presentment at 1 X. Street is not dispensed with. *Sands v. Clarke*, 19 L. J. C. P. 84.

13. If the maker of a note payable generally has absconded from Canada, presentment is dispensed with; but if the maker has only removed from one place in Canada to another, it must be shown that application has been made at the place to which he is gone and with due diligence he could not be found. *Browne v. Boulton*, U. C., 9 Q. B. 64; *Reid v. Morrison*, 2 Watts & S. 401; *Duncan v. McCullough*, 4 Serg. & R. 480; *Wolfe v. Jewett*, 10 Louis. 390; *La. State Ins. Co. v. Shamburg*, 2 Martin N. S. 511. *Rej.* 22nd July, 1807, D. 14, 1, 23; *Rej.* 6th December, 1831, D. 31, 1, 34.

14. Where a note payable generally is made and dated in New York, the maker then residing in Florida, to the knowledge of the holder, demand must be made of the maker in Florida in order to charge the indorser. *Taylor v. Snyder*, 3 Denio, 145.

15. The maker of a promissory note who was a merchant residing and carrying on business in the city of St. John, having, before the note became due, closed his store and absconded, Held, that presentment at his late dwelling house was sufficient without proof of presentment at the store, or that the store remained closed on the day the note fell due. *Robinson v. Taylor*, 2 Kerr, 198; *McGruder v. Bank of Washington*, 9 Wheaton, 204.

16. Presentment is dispensed with, when the bank where the note was made payable, had ceased to do business in the place. *McRobbie v. Torrance*, 4 Ma. R. 114.

17. Forgery of any signature to a bill is no excuse for not presenting a bill for payment and notice of dishonor. *Cass.* 17th March, 1829, D. 29, 1, 180; 2 *Pardessus*, 347.

18. The indorser who has forged the signature of the drawer cannot set up the want of diligence, unless there be provision in the hands of the drawee, for he is responsible as drawer. *Rej.* 10th March, 1824, D. 24, 1, 469.

19. No formal demand is necessary if the note payable and owned by a bank be at the bank at maturity. *Thomas v. Marsh*, 2 La. An. 353; *Bank of U. S. v. Carneal*, 5 Peters, 543. Otherwise if the bank be not the holder or not authorized to collect. *Bank of U. S. v. Smith*, 11 Wheaton, 171. See also *Smith v. Robinson*, 2 Louis. 408; *Allain v. Lazarus*, 14 id. 327. See section 45, nn. 11 and 12.

20. The defendant had a house in Mangerville, where his family lived, and where he resided in the winter; but during the rest of the year, from May till about the end of December, he carried on business at Indiantown, and resided at the house of B., where his notes had several times been presented for payment, and notices of dishonor had been left for him, and which notes he had paid. In January, 1857, a clerk in the bank, who had formerly delivered notices at the same place, left a notice of dishonor at B.'s house, addressed to the defendant, which notice he never received, having left Indiantown for Mangerville about three weeks before. The judge left it to the jury whether the holder of the note had used due diligence to ascertain the defendant's residence and in giving the notice of dishonor. Held, per *Carter, C. J., Wilmot, J., Ritchie, J. (N. Parker, M. R., and R.*

Parker, J. when read which not the averment of no notice of dishonor. *son v. Tap*

21. The for the put locked in note sworn presentment whether the question by a presentment been made and that the question.

22. Bill accommodated vide the act not necessary *Stavner v. 56 L. J. Ch. 20 La. An. 14, 1, 623; 157; 1 Rogers v. Ruston, 2323. The necessary to 11 East. at 23. A check sufficient for it will be drawer. See*

The following settlement, p.

24. The *R. 200; W.*

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28. Held, presentment for the damage issued by the delivered to persons leaving possible only but not for notes. *Brown*

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Parker, J., *dissentientibus*), that the direction was right; and that when reasonable diligence has been used to discover the place to which notice should be sent, and it has been sent accordingly, it proves the averment of due notice in the declaration; but that if, in consequence of the holder being unable to discover the indorser's residence, no notice of dishonor is given, the excuse should be averred. *Patterson v. Tapley*, N. B., 4 A. 529.

21. The holder of a note swore that he went to the maker's store for the purpose of presenting it for payment, but finding the door locked made a formal presentment at the door. The maker of the note swore that he was at his store at the time stated, and that no presentment was made. The judge left to the jury the question whether the holder had presented the note or not, and in answer to a question by the jury, told them that for the purposes of the suit such a presentment would be sufficient, no objection on that ground having been made by the defendant. Held, that there was no misdirection, and that the jury could not have been misled by the answer to their question. *Reed v. Kavanagh*, N. B., 4 A. 457.

22. Bill payable to drawer's order is accepted and indorsed to accommodate the drawer. The drawer discounts it, but does not provide the acceptor with funds to meet it at maturity. Presentment is not necessary to charge the drawer. *Gritlin v. Phillips*, 2 R. de L. 30; *Staryer v. Howatt*, 3 R. & G. 267; *Crofton v. Crofton*, 33 Ch. D. 612; 56 L. J. Ch. 135; *Dickins v. Beal*, 10 Peters, 572; *Blum v. Bidwell*, 20 La. An. 43; *Rhett v. Roe*, 2 How. 457; *Cass*, 25th August, 1813, D. 14, 1, 623; *Rej.* 29th August, 1836, D. 37, 1, 181; *Pothier*, nn. 147, 157; 1 *Rogue*, 327; 2 *Savary*, *Parère* 20, p. 169; *Bank of Montreal v. Ruston*, 1 L. C. R. 252; *Mount v. Dunn*, 4 L. C. R. 354 C.C., art. 2323. The law is the same under section 46 (c). Presentment is necessary to charge the accommodation indorser. *Esdaile v. Sowerby*, 11 East. at p. 114; *Bowes v. Howe*, 5 Taunt. 30, Ex. Ch.

23. A cheque is drawn on the Union Bank, the drawer not having sufficient funds there to meet it, and having no reason to expect that it will be honored. Presentment is not necessary to charge the drawer. *Sands v. Clarke*, 19 L. J. C. P. 84; *Pierce v. Cate*, 66.

The following facts have been held to be no excuse for want of presentment, protest, notice of dishonor:—

24. The insolvency of the drawee. *Quebec Bank v. Ogilvy*, 3 Q. B. R. 200; *Walton v. Watson*, 1 Martin N. S. 347. See *supra*, n. 11.

25. The dangerous illness of the maker. *Nowlin v. Roach*, 2 Kerr. 337.

26. Irregularities or delay of the mail service which prevent a bill from arriving in time. *Grant v. Long*, 12 Louis. 402.

27. The death of the drawee or acceptor. *Dana v. Bradley*, N. B., *Siev. Dig.*

28. Held, that holders for collection were not dispensed with presentment and notice of dishonor, and were liable to their principal for the damages resulting from their neglect, notwithstanding a notice issued by them, and which the plaintiffs had received, that all notes delivered to them for collection should be wholly at the risk of the persons leaving them, and that they (the defendants) would be responsible only for moneys actually received in payment of such notes, but not for any omissions, informalities or mistakes in respect of such notes. *Browne et al. v. Commercial Bank*, U. C., 10 Q. B. 129;

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Wilson v. Pringle, U. C., 14 Q. B. 230. See also to the same effect, Cass., 7th November, 1869, D. 72, 1, 114; Cass., 1st May, 1872, D. 72, 1, 112; Allen v. Snyder, 20 Wend. 321; Crawford v. La. State Bank, 1 Martin N. S. 214, 365; Miranda v. City Bank, 6 Louis. 74; Chalmers, 133.

29. Where a note is payable to and indorsed by several persons, though not in partnership, notice to one is notice to all. Bank of Michigan v. Gray, U. C., 1 Q. B. 422. Otherwise by par. j. of section 49.

By waiver express or implied. See section 50 (b).

Cass. 9th Nov., 1870, D. 70, 1, 350; Req. 10th April, 1876, D. 76, 1, 341.

30. Waiver of notice of dishonor does not of itself include a waiver of presentment. Hill v. Heap, D. & R. N. P. 57; Wilkins v. Dawes, 20 La. An. 538; Lyon, 22nd August, 1867, D. 67, 2, 225; Porter v. Kemball, 53 Barb. 467; Union Bank v. Hyde, 6 Wend. 572.

31. Held, under the English Act, that failure by the holder of a bill of exchange, after the exercise of reasonable diligence at the time the bill is dishonored, to find the drawer of the bill at the address he has given, does not dispense with notice of dishonor, if an address at which the drawer is to be found comes to the knowledge of the holder before action brought. Studdy v. Beesty, 60 L. T. 647.

32. The following undertaking of the indorser of a promissory note, "I do request that hereafter any notes that may fall due in the Union Bank, on which I am or may be indorser, shall not be protested, as I will consider myself bound in the same manner as if the said notes had been or should be legally protested," held to be a waiver of demand and notice; both parties having had a course of dealing founded on that construction. Union Bank v. Hyde, 6 Wheaton, 572.

33. A subsequent promise to pay by the indorser in ignorance of the defect of due presentment, though he was aware at the time that he was discharged for want of due notice, is a waiver only of the want of notice, not that of presentment. Nowlin v. Roach, 2 Kerr, 337.

34. This promise may be proved by verbal evidence. Johnson v. Geoffrion, 13 L. C. R. 161.

The following have been held valid waivers of presentment, protest and notice of dishonor:—

35. A partial payment. Rice v. Bowker, 3 L. C. R. 305.

36. An unconditional promise (verbal or written) to pay if made with the knowledge of the defect. Ross v. Wilson, 2 R. de L. 28; Johnson v. Geoffrion, 13 L. C. R. 161; City Bank v. Hunter, 2 R. de L. 171; Bank of B. N. A. v. Ross, U. C., 1 Q. B. 199; McCarthy v. Phelps, U. C., 30 Q. B. 57; Kilby v. Rochussen, 13 C. B. N. S. 357; Watrous Engine Company v. Christie, 6 R. & G. 109; 6 C. L. T. 441; Watters v. Lordly, 2 Kerr 13; Saint Stephen Branch R. R. Co. v. Black, 2 Han. 129; Allen v. McNaughton, N. B., 4 A. 234; McDonald v. Everitt, 3 Kerr 569; Whitehouse v. Bedell, 16 N. B. R. 46; Deering v. Hayden, 3 Ma. R. 219; Union Bank v. Grimshaw, 15 Louis. 321; Thornton v. Wynn, 12 Wheat. 183; Goodhall v. Polley, 1 T. R. 712; Picken v. Graham, 1 Cr. & M. 729; Req. 10th November, 1812, D. 13, 1, 116; Req. 20th June, 1827, D. 27, 1, 280. See Louisiana Heunen's Digest, vol. 1, p. 234.

37. But knowledge of the defect of presentment.

38. The time left for the holder to present the note, if he has not done so, is the time left for the holder to present the note, if he has not done so.

39. When a bill is dishonored, the holder is not bound to present it again, unless he has not done so.

40. When a bill is dishonored, the holder is not bound to present it again, unless he has not done so.

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45. When a bill is dishonored, the holder is not bound to present it again, unless he has not done so.

46. When a bill is dishonored, the holder is not bound to present it again, unless he has not done so.

47. When a bill is dishonored, the holder is not bound to present it again, unless he has not done so.

48. When a bill is dishonored, the holder is not bound to present it again, unless he has not done so.

37. But a partial payment or promise to pay, made without the knowledge of the want of presentment, is no waiver of the presentment. *Dana v. Bratley*, N. B., *Stev. Dig.*

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38. The payee of a note indorsed it to the plaintiff as security for a debt; on the day the note came due (the maker having in the meantime left the country) the plaintiff went to the indorser and gave him the note, saying he supposed it was of no use to any one; the indorser handed it back to the plaintiff, and told him to keep it for the present. Held, that this was evidence of a dispensation of presentment by the indorser. *Masters v. Stubbs*, N. B., 4 A. 453.

39. Where the defendant, an absconding debtor, on the day a note became due, wrote to the plaintiffs stating his inability to pay, and requesting further time, the court held that presentment was unnecessary, although the notes were payable at a particular place. *McDonnell v. Lowry*, 3 O. S. 302; *Gore v. Vinning*, 7 Met. 212; *Bruce v. Lytle*, 13 Barb. 163; *Bigelow*, 382; *Phison v. Kellner*, 4 Campb. 285; *Burge v. Legge*, 5 M. & W. 418; *Brett v. Levett*, 13 East, 214.

40. An admission by the defendant that he had received notice of dishonor, in the absence of any proof that it was received too late, or any objection made to it, is evidence of its sufficiency. *Read v. Kavanagh*, N. B., 4 A. 457.

41. An offer to give promissory notes at three and six months for the amount due on the bill, not duly protested, which was not accepted. Held, to be no waiver of the laches. *Bank of N. B. v. Knowles*, 2 Kerr 219; *Laporte v. Landry*, 4 Martin N. S. 125.

42. Whenever the indorser writes to the holder to make him believe it unnecessary to give him notice of non-payment, especially when he states the maker to be insolvent, such letter written before maturity will be construed as a waiver of notice. *Beckett v. Cornish*, U. C., 4 Q. B. 138; See *supra*, n. 30.

43. Where after the time for giving notice of dishonor, even pending suit, there is an absolute promise to pay, deliberately made with full knowledge of the facts, this will prevent the defendant from setting up that a notice was not given. *Shaw v. Salmon*, U. C., 19 Q. B. 512; *Burke v. Elliott*, U. C., 15 Q. B. 610; *McCuniffe v. Allen*, U. C., 6 Q. B. 377; *McMurrich v. Powers*, U. C., 10 Q. B. 481; *Blum v. Bidwell*, 20 La. An. 43; *Butler v. Morrison*, 18 id. 363; *Mitchell v. Young*, 21 id. 279; *James v. Wade*, 21 id. 548.

44. But the promise to pay, in such a case, must have direct reference to the bill in question. Therefore if there be more than one bill, the promise must refer specifically to the one in question. *Bank of Montreal v. Scott*, U. C., 24 Q. B. 115.

45. The drawer of a bill indorses it to C., who indorses it to D. On the day of dishonor, but before the fact of dishonor could be known, the drawer, knowing the acceptor to be insolvent, says to C., "I suppose I shall have to take up the bill. If you will call with it in a few days I will pay you." D. gives no notice of dishonor either to C. or the drawer. D. cannot avail himself of the promise to C., and sue the drawer. *Pickin v. Graham*, 1 Cr. & M. 725.

46. The drawer of a bill indorses it to C., who indorses it to D. Some time after the dishonor, the drawer, who has received no notice, is informed by C. that D., the holder, is going to sue him. The drawer says he will pay if D. will give him time. This is evidence of waiver of notice. *Woods v. Dean*, 32 L. J. Q. B. 1. See further,

§ 47. *Lecaen v. Kirkman*, 6 Jur. N. S. 17; *North Stafford Loan Co. v. Wythies*, 2 F. & F. 563; *Kilby v. Rochlussen*, 18 C. B. N. S. 357; *Sheldon v. Horton*, 43 New York R. 93.

47. Waiver of notice of dishonor in favor of the holder enures for the benefit of parties prior to such holders as well as subsequent holders. *Rabey v. Gilbert*, 30 L. J. Ex. 170.

48. Waiver of notice of dishonor by an indorser does not affect parties prior to such indorser. *Turner v. Leech*, 4 B. & Ald. 451.

49. The waiver binds only the party who agrees to it, and when agreed to by a separate paper, is not binding upon the other parties. 4 *Alauzet*, 337, 338; *Rej.*, 6th December, 1831, D. 31, 1, 361; 2 *Pard.* 307.

50. "Protest waived" made about the time of maturity means no demand and no notice of dishonor to the party who wrote it and all subsequent parties. *Wall v. Bry*, 1 An. 312; *Wilkins v. Gillis*, 20 An. 538; *Carmena v. Mix*, 15 Louis. 165; *Marsh v. Masterman*, 21 An. 377; *O'Leary v. Martin*, 21 id. 389; *Cass.* 9th November, 1870, D. 70, 1, 350; *Req.* 10th April, 1876, D. 76, 1, 341; *Alauzet*, 342.

51. "Sans frais" or "retour sans frais," is a waiver by party who wrote it and all subsequent parties, of protest and notice of protest by notary, but not of demand and some notice of dishonor by the holder himself. *Lyon*, 22nd August, 1867, D. 67, 2, 225. A notice *à l'amiable* from the holder is required in France. *Rej.* 20th June, 1827, D. 27, 1, 280; *Rej.* 23rd December, 1835, D. 36, 1, 206; *Pardessus*, 138; 4 *Alauzet*, 336, 338 340. See also section 16, nn. 3 and 4.

52. The words "Protêt signifié" (protest served), written above the signature of the indorser, is a waiver of notice of dishonor. 2 *Pardessus*, 314.

Dishonor by
non-payment.

47. A bill is dishonored by non-payment, (a) when it is duly presented for payment, and payment is refused or cannot be obtained, or (b) when presentment is excused and the bill is overdue and unpaid;

Recourse in
such case.

(2) Subject to the provisions of this Act, when a bill is dishonored by non-payment, an immediate right of recourse against the drawer, acceptor and indorsers accrues to the holder.

1. The maker may be sued on the afternoon of the last day of grace. *Ontario Bank v. Foster*, 6 L. N. 398.

2. The arrest of the maker at five o'clock of the last day of grace not premature. *Sinclair v. Robson*, U. C., 16 Q. B. 211.

3. In Quebec a note is immediately exigible as against a party who becomes insolvent. *Lovell v. Meikle*, 2 L. C. J. 69.

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48. Subject to the provisions of this Act, when § 48.
 a bill has been dishonored by non-acceptance or
 by non-payment, notice of dishonor must be given Notice of dishonor and effect of non-notice.
 to the drawer and each indorser, and any drawer
 or indorser to whom such notice is not given is
 discharged; ⁽¹⁾ Provided that :—

(a) Where a bill is dishonored by non-acceptance, and notice of dishonor is not given, the rights of a holder in due course subsequent to the omission shall not be prejudiced by the omission ;

(b) Where a bill is dishonored by non-acceptance and due notice of dishonor is given, it shall not be necessary to give notice of a subsequent dishonor by non-payment, unless the bill shall in the meantime have been accepted.

1. An accommodation indorser is entitled to a notice of non-acceptance and non-payment, and the notice of non-payment only is not sufficient. *Gore Bank v. Craig*, U. C., 7 C. P. 344. Modified by clauses 43 and 48 of the Act.

2. Indorser after maturity is entitled to notice of dishonor. *McCall v. Witkowski*, 16 La. An. 179.

3. Holder is bound only to notify the indorser he intends to hold liable. *Crane v. Trudeau*, 19 La. An. 307.

4. Notice to the solicitor of the indorser is not sufficient, unless expressly authorized to receive notice. *Bird v. Doyal*, 20 La. An. 541.

49. Notice of dishonor, in order to be valid and Rules as to notice of dishonor.
 effectual, must be given in accordance with the
 following rules :—

(a) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill ;

(1) *Darling v. Gillies*, 20 N. S. R. 423 ; *Rej.* 21st June, 1810, D. 10, 1, 329.

§ 49.

(b) Notice of dishonor may be given by an agent either in his own name, or in the name of any party entitled to give notice, whether that party is his principal or not;

(c) Where notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given;

(d) Where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given;

(e) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill and intimate that the bill has been dishonored by non-acceptance or non-payment; ⁽¹⁾

(f) The return of a dishonored bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonor;

(g) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice, unless the party to whom the notice is given is in fact misled thereby;

(h) Where notice of dishonor is required to be given to any person, it may be given either to the party himself or to his agent in that behalf;

(1) Robinson v. Taylor, 2 Kerr, 198.

(i) Where the drawer or indorser is dead, and § 49.
the party giving notice knows it, the notice must
be given to a personal representative, if such
there is and, with the exercise of reasonable dili-
gence, he can be found;

(j) Where there are two or more drawers or
indorsers who are not partners, notice must be
given to each of them, unless one of them has
authority to receive such notice for the others;

(k) The notice may be given as soon as the
bill is dishonored, and must be given not later
than the next following juridical or business
day;

(2) Where a bill, when dishonored, is in the If dishonored
bill is in the
hands of an
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hands of an agent, he may either himself give
notice to the parties liable on the bill, or he may
give notice to his principal. If he gives notice
to his principal, he must do so within the same
time as if he were the holder, and the principal,
upon receipt of such notice, has himself the same
time for giving notice as if the agent had been
an independent holder;

(3) Where a party to a bill receives due notice Notice to an-
tecedent par-
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of dishonor, he has, after the receipt of such no-
tice, the same period of time for giving notice to
antecedent parties that the holder has after the
dishonor;

(4) Notice of the protest of dishonor of any bill When notice
shall be given.
payable in Canada shall, notwithstanding any-
thing in this section contained, be sufficiently
given if it is addressed in due time to any party

§ 49. to such bill entitled to such notice, at his customary address or place of residence, or at the place at which such bill is dated, unless any such party has, under his signature, designated another place; and in such latter case such notice shall be sufficiently given if addressed to him in due time at such other place; and such notice so addressed shall be sufficient, although the place of residence of such party is other than either of such above-mentioned places; and such notice shall be deemed to have been duly served and given for all purposes if it is deposited in any post office, with the postage paid thereon, at any time during the day on which such protest or presentment has been made, or on the next following juridical or business day; such notice shall not be invalid by reason of the fact that the party to whom it is addressed is dead;

Miscarriage in
post service.

(5) Where a notice of dishonor is duly addressed and posted, as above provided, the sender is deemed to have given due notice of dishonor, notwithstanding any miscarriage by the post office.

See also Cons. St. of Ontario, ch. 42, s. 16.

The notice must be in writing or by personal communication:—

1. It is immaterial that a notice of dishonor is dated on Sunday, if given on the following Monday and the last day of grace is falling on Sunday. *Blinn v. Dixon*, U. C., 5 Q. B. 580.

2. Mere notice of non payment, which does not express or imply presentment and dishonor, is not sufficient. *Hartley v. Case*, 4 Barn. & C. 339; *Gilbert v. Dennis*, 3 Met. 495; *Wynn v. Alden*, 4 Denio, 163; *Bigelow*, 276, 277. See *infra*, nn. 14 to 20.

See sect. 49 (e).

3. When a note is payable at a particular place, it is not necessary that the notice of dishonor should show that the note had been presented at that place and dishonored. *Paul v. Joel*, 28 L. J. Ex. 143;

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Ex parte Lowenthal, L. R., 9 Ch. 591; Everard v. Watson, 1 E. & B. 804; Mills v. Bank of U. S., 11 Wheat. 431; Bank of Montreal v. Grover, U. C., 3 Q. B. 27; Bank of U. C. v. Street, 1 Ont. Dig. 497. See section 49 (e).

4. A verbal notice is sufficient. Housego v. Cowne, 2 M. & W. 348; Wharton v. Wright, 1 C. & K. 585; Allen v. Edmundson, 2 Exch. 724; Viale v. Michael, 30 L. T. N. S. 453; Gilbert v. Dennis, 3 Met. 495. Contra Cowan v. Turgeon, 2 R. de L. 230. See infra, nn. 6, 7, 8. See sections 49 (e), 51 (1) and notes at pages 153.

5. C. is the indorser of a bill which is dishonored. Verbal notice to his solicitor is not sufficient. Cross v. Smith, 1 M. & S. 554.

6. The drawer of a bill is a non trader. Verbal notice of dishonor given to his wife at his house, in his absence, may be sufficient. Housego v. Cowne, 2 M. & W. 348; Wharton v. Wright, 1 C. & K. 585.

7. The indorser of a bill is a merchant. Notice of dishonor, verbal or written, given to or left with a clerk at his counting-house, is sufficient. Allen v. Edmundson, 2 Exch. 724; Viale v. Michael, 30 L. T. N. S. 453.

8. C. indorses a bill "In need at Messrs. X. & Co." Notice of dishonor given to X. & Co. is not sufficient to charge C. Ex parte Prange, L. R., 1 Eq. 5.

9. It is the duty of the drawer or the indorser of a bill, if he be absent from his place of business or residence, to see that there is some person there to receive notice on his behalf. Allen v. Edmundson, 2 Exch. 723.

10. A notice given by telegraph is sufficient, but there must be proof of the receipt of the telegram. McLean v. Garnier, 3 R. & G. 276. *Quere* as to notice by telephone.

Bill must be sufficiently identified.—

11. Notice is not voided by a mistake in its date or the description of the note, if its identity is well established. Robinson v. Taylor, 2 Kerr, 198; Bank of Alexandria v. Swann, 9 Peters, 33; Journey v. Pierce, 2 Houst. 176. Handyside v. Courtney, 1 L. C. R. 250.

12. Where a notice of dishonor describes a bill for £28 instead of £25, it was held to be a question for the jury whether the defendant was misled by the notice. Thompson v. Cotterell, U. C., 11 Q. B. 185; Bank of Alexandria v. Swann, 9 Peters, 33. See also How v. Owen, U. C., 12 C. P. 101; Thorn v. Sanford, U. C., 6 C. P. 462.

13. "I give notice that a bill, etc. (description), indorsed by you, lies at 1 X. Street, dishonored." Sufficient. King v. Bickley, 2 Q. B. 419.

14. The holder's clerk wrote to an indorser that "B.'s acceptance due that day was unpaid, and requested his immediate attention to it." Sufficient. Bailey v. Porter, 14 M. & W. 44.

15. "Your draft which became due yesterday is unpaid. Unless the same is paid immediately I shall take proceedings. Noting 5s." Sufficient. Armstrong v. Christiani, 5 C. B. 687; Everard v. Watson, 1 E. & B. 801.

16. The following notice left at the drawer's counting-house by the holder's clerk: "B.'s acceptance to A., £50, due January 1st, is unpaid. Payment to D. is requested before 4 p. m." Sufficient. Paul v. Joel, 27 L. J. Ex. 380, affirmed 28 L. J. Ex. 143.

§ 49.

17. "D. Bank. I beg to intimate that B.'s acceptance to you due 1st January is still unpaid, and I have to request your immediate attention to the same." No signature. Sufficient. *Maxwell v. Bram*, 10 L. T. N. S. 301.

18. Notice to drawer of bill accepted by B. "Yours and B.'s note of hand is now due, and your attention to the same will oblige." Sufficient. *Bain v. Gregory*, 14 L. T. N. S. 601.

19. The following notice was held to be sufficient, the note being payable at the bank:—"Sir: The note of A.B. for £50, at ninety days, from the 20th January, 1841, endorsed by you and due this day, remains unpaid. Therefore the holders look to you for payment thereof as such endorsers." *Bank of Montreal v. Grover*, U. C., 3 Q. B. 27; see also *Blinn v. Dixon*, U. C., 5 Q. B. 580.

20. A note signed by Courtney, payable to his own order, was indorsed by the latter and one Moore. No other note existed. The following notice, addressed to the maker and indorser conjointly, was held sufficient:—"Your (W.V. Courtney's) promissory note for £30 currency, dated at Montreal the 2nd September, 1856, payable three months after date to you, or order, and endorsed by you, was this day, at the request of Messrs. Handyside, Sinclair & Company, of this city, merchants, duly protested by me for non-payment." *Handyside v. Courtney*, 1 L. C. J. 250.

21. A notice to the drawer which describes the bill as payable at the "S. Bank," when in fact it was payable at the "T. Bank," or which describes a bill of exchange as a note, or which transposes the names of drawer and acceptor, or which describes the acceptor by a wrong name, may be sufficient. *Bromage v. Vaughan*, 16 L. J. Q. B. 10; *Stockman v. Parr*, 11 M. & W. 809; *Bain v. Gregory*, 14 L. T. N. S. 601; *Mellersh v. Rippen*, 7 Exch. 578; *Harpham v. Child*, 1 E. & F. 652.

The notice must be given by or on behalf of the holder.—

22. The notice must be given by the holder or some one having authority to act on his behalf, or by any indorser who at the time may be liable on the bill. *Stewart v. Kennett*, 15 M. & W. 235; *Chanoine v. Fowler*, 3 Wend. 173; *Chapman v. Keane*, 3 Ad. & El. 193; *Harrison v. Ruscoe*, 15 M. & W. 231; *Lysaght v. Bryant*, 9 C. B. 46.

23. C. is the first indorser of a dishonored bill held by D. D. gives notice to C. one day late. C. on the same day gives notice to the drawer, thus, as it were, making up for the lost day. This notice is ineffectual; for C., having been discharged by the holder's delay, is a mere stranger. *Turner v. Leech*, 4 B. & Ald. 451.

24. A bill indorsed by C. is held by D. D.'s attorney gives notice of dishonor to the drawer, but by mistake gives it in C.'s name instead of D.'s. The notice is sufficient, provided C. is liable to D., and has a right of recourse against the drawer. *Harrison v. Ruscoe*, 15 M. & W. 231.

25. C., the indorser of a bill, holds it as agent for the indorsee. C. presents it for payment, and it is dishonored. Notice of dishonor given by C. in his own name is sufficient. *Lysaght v. Bryant*, 19 L. J. C. P. 160. He may also sue in his own name. *Hunt v. Stone*, 19 La. An. 526.

26. A party entitled to give notice may constitute the drawee or acceptor his agent for the purpose of giving notice of dishonor. *Rosher v. Kieran*, 4 Camp. 87, as modified by *Harrison v. Ruscoe*, 15

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M. & W. 235; *Bailey v. Bodenham*, 33 L. J. C. P. 255; *Stanton v. Blossom*, 14 Massachus. R. 116.

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27. Notice of dishonor may be given by the party entitled to give it either personally or by messenger or other agent. *Pearson v. Crallan*, 2 Smith, 404; or through the post-office. *Stoeken v. Collin*, 7 M. & W. 515.

28. The holder is not bound to give notice of dishonor to more than one indorser; and the latter and every other previous indorser has the same time for giving notice. Thus, a bill payable in London is indorsed in blank by the holder, and deposited with a country banker for collection. The country banker's London agent presents it for payment and gives him due notice of its dishonor. The country banker on the day after the receipt of such notice gives notice to his customer, who in turn gives similar notice to his indorser. This indorser has received due notice. *Bray v. Hadwen*, 5 M. & S. 68; *Firth v. Thrush*, 8 B. & C. 387; *Lawson v. Farmers' Bank of Salem*, 1 Ohio, 206. *La. State Bank v. Hennen*, 4 Martin N. S. 226; *Peyroux v. Duberland*, 11 Louis. 84; *Grand Gulf Co. v. Barnes*, 12 Robinson, 127.

29. C. indorses a bill to the Liverpool branch of the D. Bank. The Liverpool branch sends it to the Manchester branch, and the Manchester branch indorses it to the head office in London, who presents it for payment. The head office sends notice of dishonor to the Manchester branch, the Manchester branch sends notice to the Liverpool branch, who gives notice to C. Each branch, as regards time, is to be considered a distinct party. *Clode v. Bayley*, 12 M. & W. 51, approved in *Prince v. Oriental Bank*, 3 App. Cas. 332, P. C.

30. X. pays a bill *supra protest* for the honor of C., an indorser, who resides at Bruges, and the same day posts the bill to C. C. by return of post sends the bill back to X., who at once gives notice of dishonor to the drawer. Although six days have elapsed since the dishonor, the notice is in time, and X. can sue the drawer. *Goodall v. Polhill*, 14 L. J. C. P. 146.

31. A notice that a note payable by the defendant or order at the residence of D. was held to convey a sufficient intimation to the defendant, that D. was the holder of the note when it fell due. *Harris v. Perry*, U. C., 8 C. P. 407.

The notice must be addressed and given to the drawer or indorser, or some one on his behalf. See sections 48, 49 (h).

32. Where a note is indorsed by a member of a firm in his individual name, a notice to the firm will not, it seems, be sufficient. *Bank of Montreal v. Grover*, U. C., 3 Q. B. 27.

33. Joint drawers or indorsers, who are not partners, must be separately notified. *State Bank v. Slaughter*, 7 Blackf. 133; *Bigelow*, 284. See 49 (j).

34. Generally a guarantor or *donneur d'aval* is not entitled to notice. *Vyse v. Wakefield*, 6 M. & W. 442; *Makin v. Watkinson*, L. R., 6 Ex. 25; *Vinal v. Richardson*, 13 Al. 521. Otherwise settled by section 56 of the Act.

35. A notice to a female indorser beginning "Sir" is sufficient. *Mitchell v. Brown*, 15 L. C. R. 425; contra *Seymour v. Wright*, 3 L. C. R. 454. The former alone should be followed. See section 49, (e and g); *supra*, nn. 11, 20. See notes.

§ 49.

36. A person sent by the holder goes to the house of the drawer, who is not a trader, and not finding the drawer informs his wife that he has brought back the bill dishonored. The wife says she will tell her husband. This may be sufficient. *Housego v. Cowne*, 2 M. & W. 348.

37. The holder's clerk goes to the drawer and tells him that his bill has been presented, and that the acceptor cannot pay it. The drawer replies that he will see the holder about it. This may be sufficient. *Metcalf v. Richardson*, 11 C. B. 1011.

38. A notary's clerk takes the bill, with the notary's ticket attached, to the drawer's office, and shows it to a clerk there. The clerk looks at it, says the drawer is out and has left no orders. The notary then leaves the usual notice that the bill is due at his office. This may be sufficient. *Viale v. Michael*, 30 L. T. N. S. 453; *East v. Smith*, 16 L. J. Q. B. 292; *Chard v. Fox*, 14 Q. B. 200; *Jennings v. Roberts*, 24 L. J. Q. B. 102.

39. Delivering a notice of dishonor to an indorser by leaving it with an out-door servant, who is not an inmate of the indorser's family, is insufficient. Otherwise, if it actually reached the indorser. *Commercial Bank v. Weller*, U. C., 5 Q. B. 543.

40. A notice addressed to "Edward C. Price," instead of "Edward Price," and actually received by the latter, is sufficient. *Girvan v. Price*, N. B., 3 A. 409.

41. If the drawer or indorser has a place of business, the notice should be addressed to him there; if he has not, then it should be addressed to him at his residence, and the party giving notice is bound to use reasonable diligence to discover such place of business or residence. *Woodcock v. Houldsworth*, 16 M. & W. 124; *Mackay v. Judkins*, 1 F. & F. 208; *Renwick v. Tighe*, 8 W. R. 391.

42. When, however, the bill contains an address, it seems that such address is in any case sufficient to charge the party giving that address. *Hawkes v. Salter*, 4 Bing. 715; *Skilbeck v. Garbett*, 7 Q. B. 846.

43. The maker of a note indicated the place of residence of the indorser. Held, that a notice addressed to that place was sufficient, although the place stated was not the proper place for sending notice. *McMurrich v. Powers*, U. C., 10 Q. B. 481.

44. A notice sent to an erroneous address, given by the agent of the indorser, is sufficient. *Vaughan v. Ross*, U. C., 8 Q. B. 506.

45. X, who has authority to indorse for C, indorses a bill in C's name. Notice of dishonor given to X, is perhaps sufficient. *Firth v. Thrush*, 8 B. & C. 391.

46. A notice sent to the indorser at the place where the note was dated is valid, if no other address be given. *Howard v. Sabourin*, 2 L. C. R. 121, 5 L. C. R. 45.

47. A notary, not being able to read the defendant's signature on the bill, made an imitation of it upon his post office address. Held, that the imitation, if exact, would be a sufficient address; but considering the facts in evidence there should be a new trial. *Baillie v. Dickson*, U. C., 4 Q. B. 167.

48. Where the holder of a note employs a notary to protest the same at maturity, it is his duty to give the notary all the information that he is possessed of as to the names and residences of the indorsers. Therefore, where the signature of an endorser was so peculiar that no

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one unacquainted with it could decipher it, although the holder of the note was well acquainted with the signature, and aware of the party's residence, both of which he omitted to communicate to the notary, who, when protesting the note made, or as near as might be, a *fac simile* of the signature, and so addressed the notice of dishonor to "Belleville, P. Q.," but the indorser swore that the notice never reached him, though resident in Belleville. Held, that the endorser was discharged. S. C., 7 A. R. 759.

48a. The certificate of the notary that he left the notice of protest with the agent of the indorser is not *prima facie* evidence of the agency. *Drumm v. Bradfute*, 18 La. An. 680. See section 51, sub. 10, section 63, sub. 5.

Where the drawer or endorser is dead.—

49. A notice by the holder unaware of the death of the drawer addressed to the place where the bill is dated, in pursuance to 37 Vict. c. 57, s. 1, is sufficient, and will avail to a subsequent indorser, who has paid the bill although aware of said death before its maturity. *Cosgrave v. Boyle*, 1 Ca. S. C. R. 165.

50. The indorser, a married woman, died intestate, during the currency of a note indorsed by her as surety for her husband, and notice of protest was sent to "James Bell, executor of the last will and testament of M. A. Bell," and received by him, her husband, who resided with his children in the house which his deceased wife had occupied. No letters of administration had been granted. Held, that the notice was sufficient. *Merchants Bank v. Bell*, 29 Ch. 413; see *Steinhoff v. The Merchants Bank*, U. C., 46 Q. B. 25, 68.

50a. Where a commercial partnership has been dissolved by the death of one of the partners, notice of dishonor should be given to the surviving partner. A notice only to the executor of the deceased partner will not be sufficient to bind the firm. *Slocomb v. Lizardi*, 21 La. An. 355.

Deposited in any post office, etc.—

51. A notice mailed at the post office of the place where the note was dated (at Toronto), addressed to the indorser in "York Township" in which he resided, was held sufficient, there being no evidence that a letter for any other purpose would usually be addressed in any other manner, and Toronto being in the township of York. *Bank of U. C. v. Bloor*, U. C., 5 Q. B. 619.

52. As to miscarriage by post office. *Bank of U. C. v. Smith*, U. C., 3 Q. B. 358; affirmed, U. C., 4 Q. B. 483. As to the sufficiency of notice of dishonor, carelessly mailed by the notary to a wrong address, but actually received by the indorser about a week after. See *Leith v. O'Neil*, U. C., 19 Q. B. 233; see also *Commercial Bank v. Weller*, U. C., 5 Q. B. 433; *Bank of B. N. A. v. Ross*, U. C., 1 Q. B. 199; *Chapman v. Bishop*, U. C., 1 C. P. 432.

53. Where the notice of dishonor is not properly addressed, it must be shown that it was posted and was received in proper time. *McKenzie v. Northrop*, U. C., 22 C. P. 383; *Bank of B. N. A. v. Jones*, U. C., 8 Q. B. 86.

54. A note was in the bank on day of maturity. On the 16th the manager, who knew nothing of it, caused it to be protested. A notice to the indorser was put in his P. O. box before 6 o'clock of the 16th. Held, sufficient presentment and notice of dishonor. *Union Bank v. McKilligan*, 4 Ma. R. 29.

§ 49.

55. A notice of a note protested on 7th December under the Civil Code of Quebec, deposited on the 10th according to the certificate and the testimony of the notary, is valid, although the notice bore the post office mark of the 11th, and the postmaster and one of the clerks swore that it must have been deposited only on the 11th. *Doutre v. La Banque Jacques-Cartier*, 4 L. N. 154. See sect. 51, nn. 1 to 5.

56. A notice, mailed on the day after maturity between eight and nine o'clock in the evening, is sufficient, though it bears the post mark of the following day. The day for the purpose of posting notices signifies any time within the twenty-four hours. *Wilson v. Pringle*, U. C., 14 Q. B. 230.

57. A notice of a note protested in Albany, N. Y., mailed to a Canadian without postage prepaid, according to the laws of that State, is insufficient, as the postal arrangements between the two countries did not permit letters to pass through the Albany post without prepayment of postage from Albany to the Canadian line. *Howard v. Sabourin*, 2 L. C. R. 121; 5 L. C. R. 45.

58. When both holder and indorser reside in the same town, it is not necessary, since the passing of 37 Vict. c. 47, s. 1 (Ca.), to deliver the notice of dishonor to the indorser personally or at his residence or place of business; it is sufficient that the notice be mailed as directed by the said Statute. *Merchants Bank of Halifax v. McNutt*, 11 (Ca.) S. C. R. 126. The practice is otherwise in the United States. *Bowling v. Harrison*, 6 How. 248; *Bigelow*, 308.

59. Where the maker and indorser lived in Griersville, where the note was payable. Held, that it was sufficient to mail the notice in Meaford, a village distant about seven miles. *Taylor v. Grier*, U. C., 17 Q. B. 2.2; see also *Commercial Bank v. Eccles*, U. C., 4 Q. B. 336; *O. R. S.*, ch. 42, s. 16. See also *Citizens Bank v. Walker*, 2 La. An; 791; 1 *Hennen's Digest*, p. 212, nn. 11, 14, 31.

60. Notice of dishonor to the defendant as indorser of a promissory note, put in the post office at Saint John, and directed as follows, "Mr. D. D. (the defendant) near Blake's mills, Nashwaak," is not sufficient without proof that a letter thus directed would probably reach the defendant in due course through the medium of the post office. *Robinson v. Duff*, 2 Kerr, 206.

61. Defendant had resided and carried on business for several years at a place called Brandy Point, and was in the habit of receiving through the post office, letters addressed to him there. Held, that a notice of dishonor addressed to him at Brandy Point was sufficient, though he had changed his residence about that time—the plaintiff not being aware of such change, and having applied for information as to his residence to the payee of the note, with whom the defendant was in the habit of transacting his business in St. John. *The Bank of New Brunswick v. Millican*, N. B., 4 A. 254.

62. When there are more post offices than one in a parish, town or city, a notice is properly directed to that which is nearest the residence of the indorser, and at which he is in the habit of receiving his letters. *Gale v. Kemper*, 10 Louis. 209.

63. Notice, left with the mate on board of a ship commanded by the indorser, is sufficient. *Austin v. Latham*, 19 Louis. 88.

64. Where a party resides at two places alternately, being generally at one during one portion of the year and the other during the rest, but goes frequently from one to the other, notice directed to either will be sufficient. *Exchange Co. v. Boyce*, 3 Robinson, 307.

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The provisions contained in the Act, concerning the general § 49. duties of the holder as to presentment for acceptance or presentment for payment and notice of dishonor, are so full and complete, that explanations are almost unnecessary. Attention should however be called to sub-sections (c), (d), 2 and 3 of section 49, which will have the effect of introducing into Canada a practice hitherto unknown to our merchants, although followed in England and the United States for some years, namely, that of giving notice of dishonor in turn to each endorser, instead of to all of them at the same time. Thus, where a bill, when dishonored, is in the hands of an agent, he may himself give, on the next following juridical day, notice either to the parties liable on the bill or to his principal, and the principal, upon receipt of such notice, has also the next juridical day in which to give notice. He may give it to all the endorsers and the drawer, or only to such parties as he intends to hold liable. Therefore, the Act further provides that where a party to a bill receives due notice of dishonor, he has, after the receipt of such notice, one clear juridical day for giving notice to antecedent parties he intends to hold liable. It is prudent, therefore, for every endorser to give notice of dishonor to the drawer and all previous endorsers, unless he can ascertain in due time that the holder has given notice to all. Notice given by the holder or any endorser inures to the benefit of all parties concerned; section 49 (c), (d). This notice may be given in writing or by a personal communication, as provided for by section 49, sub. (e) and (g); but in the province of Quebec it must always be given by a notary. In the case of foreign bills or notes, notice should be given by a notary in every part of the Dominion. Sections 51 and 88.

By the English Act, it is provided that "where the drawer or indorser is bankrupt or insolvent, notice may be given either to the party himself or to the trustee." But as there is no insolvency law in Canada, that provision was left out by the Canadian Parliament. Notice of dishonor, in such a case, should always be given to the party himself and if a trustee be appointed to his estate under the provincial laws, it would be prudent to repeat it to the trustee.

It may be well to notice here a slight difference between the

Presentment
and notice
of dishonor.

§ 49.

English and Canadian Act. The English Act, section 45, sub. 4, says that a bill is properly presented at the place of payment specified in the bill. The Canadian Act, section 45, sub. (d), says that the presentment must be made at the place specified in the bill or acceptance. If the acceptance specify a place different from that contained in the body of the bill, and so distant that presentment cannot be made at both places on the day of maturity, it should be made at that which is specified in the body of the bill, otherwise the drawer and endorsers would be discharged. But the acceptor will not be, as he is not entitled to presentment for payment. See sections 45, and 52 (2) and 3. The holder should, however, present the bill at the place specified in the acceptance as soon as practicable, to save the loss referred to in section 52.

As to
acceptor.

Will such loss consist purely in the cost of suit taken against the acceptor before presentment for payment at the place indicated in the acceptance, or will it extend also to the provision or funds deposited at the place indicated,—a bank, for instance,—in the event of the bank's insolvency between the day of maturity and the day of presentment or suit. Section 52 merely mentions the cost of the suit, which shall be in the discretion of the court, and it would certainly seem very hard that the loss of the provision or funds should fall upon a holder, who has used due diligence in presenting the bill at the bank or place indicated in the acceptance. If, on the contrary, the holder has been guilty of unnecessary delay in making the presentment, the acceptor would perhaps be discharged to the extent of his damage.

Such was undoubtedly the law before the Act. *Saunderson v. Bowes*, 14 East. 500; *Dickenson v. Bowes*, 16 East. 110; *Howe v. Bowes*, 16 East. 112, and 5 Taunton 30; *Bowes v. Howe*, 5 Taunt. 30 and 16, East. 112; *Roche v. Campbell*, 3 Campbell, 247; *Trecothick v. Edwin*, 1 Stark. 468; *Rowe v. Young*, 2 B. & B. 165; *Mount v. Dunn*, 4 L. C. R. 348; *Rice v. Bowker*, 3 L. C. R. 305; *Story on Bills*, 356; *Story on Prom. notes*, § 228; *Girouard, Let. de change*, pp. 142 *et seq.*

By sections 86 and 88, the maker of a note payable at a

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particular place is deemed to correspond with the acceptor of a bill, and the provisions of section 52 would apply to him. § 50.

Where the acceptor has made, in his acceptance, an express stipulation that he will be discharged by the omission to present the bill, *v. g.*, where he has "accepted payable at the Bank of Montreal, otherwise discharged," his acceptance would then be qualified, and he would undoubtedly be discharged by such omission, at least to the extent of his injury.

50. Delay in giving notice of dishonor is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence; when the cause of delay ceases to operate, the notice must be given with reasonable diligence;

Excuses for non-notice and delay.

(2) Notice of dishonor is dispensed with:—

When notice is dispensed with.

(a) When, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or indorser sought to be charged;

(b) By waiver express or implied (1) notice of dishonor may be waived before the time of giving notice has arrived, or after the omission to give due notice;

(c) As regards the drawer, in the following cases, namely, (1) where drawer and drawee are the same person, (2) where the drawee is a fictitious person or a person not having capacity to contract, (3) where the drawer is the person to whom the bill is presented for payment, (4) where the drawee or acceptor is, as between himself and the drawer, under no obligation to accept or pay

(1) See section 46, sub-sect. (e).

§ 51. the bill, (5) where the drawer has countermanded payment ;

(*d*) As regards the indorser in the following cases, namely, (1) where the drawee is a fictitious person (2) or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the bill, (2) where the indorser is the person to whom the bill is presented for payment, (3) where the bill was accepted or made for his accommodation.

1. Want of funds in the hands of the drawee to pay the bill dispenses with protest and notice of dishonor as against the drawer, *The Bank of Montreal v. Ruston*, 1 L. C. R. 251, C.C. 2323.

2. The funds must be not only at the disposal of the drawer, but at the place of payment indicated by the drawer in the body of the bill. *The Bank of Montreal v. Ruston*, 1 L. C. R. 261; Arrêt of the 22nd January, 1607, cited in *Rogue*, 2 Jur. Cons. 335; perhaps otherwise by sect. 50 (*c*), if the drawee is a debtor.

3. Want of funds dispenses with protest as against the drawer, even if the bill be accepted. *Bank of Montreal v. Ruston*, 1 L. C. R. 261; *Pothier, Cont. de Change*, n. 157; *Rogue*, 2 Jur. Cons. 327; *Savary, Parf. Nég.*, vol. 1, p. 188, see *supra*, n. 2.

4. Want of funds does not excuse protest as against the indorser. *Bank of Montreal v. Ruston*, 1 L. C. R. 263. *Girouard, Lettres de Change*, p. 153. By the Act and also the Code, absence of funds can only affect the drawer.

Noting or protest of bill.

51. Where an inland bill has been dishonored, it may, if the holder thinks fit, be noted and protested for non-acceptance or non-payment, as the case may be; but, subject to the provisions of this Act with respect to notice of dishonor, it shall not, except in the Province of Quebec, be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser; but in the case of a bill drawn upon any person in the Province of Quebec, or payable or accepted at any place therein, in default of pro-

(2) See section 46 (*b*).

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test for non-acceptance or non-payment, as the case § 51. may be, and of notice thereof, the parties liable on the bill other than the acceptor are discharged, subject, nevertheless, to the exceptions in this section hereinafter contained;

(2) Where a foreign bill, appearing on the face Protest of foreign bill. of it to be such, has been dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill, which has not been previously dishonored by non-acceptance, is dishonored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonor, except as in this section provided, is unnecessary;

(3) A bill which has been protested for non-Subsequent protest. acceptance, or a bill of which protest for non-acceptance has been waived, may be subsequently protested for non-payment;

(4) Subject to the provisions of this Act, when Time for noting. a bill is protested, the protest must be made or noted on the day of its dishonor. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting;

(5) Where the acceptor of a bill becomes bank-If acceptor is insolvent. rupt or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers;

(6) A bill must be protested at the place where Where bill must be protested. it is dishonored, or at some other place in Canada

§ 51.

situate within five miles of the place of presentment and dishonor of such bill; Provided that:—

(a) When a bill is presented through the post office, and returned by post dishonored, it may be protested at the place to which it is returned, not later than on the day of its return or the next juridical day;

(b) Every protest for dishonor, either for non-acceptance or non-payment, may be made on the day of such dishonor at any time after non-acceptance, or in case of non-payment at any time after three o'clock in the afternoon;

What protest
shall set forth.

(7) A protest must contain a copy of the bill, or the original bill may be annexed thereto, and the protest must be signed by the notary making it, and must specify:—

(a) The person at whose request the bill is protested;

(b) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found;

If bill is lost,
&c.

(8) Where a bill is lost or destroyed, or is wrongly or accidentally detained from the person entitled to hold it, or is accidentally retained in a place other than where payable, protest may be made on a copy or written particulars thereof;

Excuses for
non-protest
and delay.

(9) Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when the delay is caused by circumstances beyond

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the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence;

(10) No clerk, teller or agent of any bank shall act as a notary in the protesting of any bill or note payable at the bank, or at any of the branches of the bank in which he is employed.

Officer of bank
not to act as
notary.

See sections 45, 46 and 49.

What protest shall set forth:—

1. Under section 14 of the Promissory Note Act, 12 Vict. ch. 22, the omission to state in the protest, that it was made in the afternoon of the day of protest, was fatal, and the indorser discharged. *Joseph v. Dentle*, 1 L. C. R. 244. *Quære* under section 51 (c), 7 and section 93 (4) of the Act. Better that protest should state that it was made after three o'clock of the last day of grace. Sect. 51, 7 (b).

2. The protest describes the maker as E. B. Perry, instead of Joseph B. Perry. Held, not fatal. *Taillon v. Perry*, 9 L. C. J. 174.

The certificate of the notary:—

3. The certificate of notice indorsed by the notary on the protest, instead of being written "on the foot of or embodied in the protest," sufficiently complies with the Act. *Lyman v. Boulton*, U. C., 8 Q. B. 323. See section 50, n. 34.

4. Where a notarial certificate of protest of a note due 25th of June was dated on the 26th of June, and certified that the notary had sent notice to the indorser, not saying when it was sent. Held, that the notice was sufficiently proved. *Wood v. Hutt*, U. C., 9 Q. B. 344.

5. A notarial certificate that a note has been duly presented is sufficient. *Blain v. Oliphant*, U. C., 9 Q. B. 473. See section 93, p. 5.

6. In Nova Scotia, protest has to bear the seal of the notary. *The Merchants' Bank v. Spinney*, 1 R. & G. 87; otherwise settled by section 93, sub. 5, and section 51.

7. The duplicate notice of protest must be produced, and the certificate of the notary that he has served the notice is insufficient, at least in Quebec, before the Act. *Seed v. Courtenay*, 3 L. C. R. 303.

8. But in Ontario it was recently held that the protest for non-payment was sufficient evidence of notice of dishonor. *Southam v. Ranton*, 9 A. R. 530. Under the Act, section 93, sub. 5, the protest will be evidence of notice of dishonor, if so stated in it.

9. Held in Ontario that the notarial certificate of the service of protest was insufficient in case of a foreign bill. *Ewing v. Cameron*, 6 O. S. 541; *Griffin v. Judson*, U. C., 12 C. P. 430; otherwise settled by section 71 (f).

10. Where a notice of dishonor of a foreign bill does not state that it has been protested, the indorser will not be liable. *Delaney v. Hall*, 2 Thom. 401. *Quære* under the Act.

§ 51.

11. In an action on a promissory note payable at a particular place, and a bill of exchange protested for non-acceptance, the only evidence to prove the presentment of the note and protest of the bill was a settled account between the parties including the note and bill and a charge for "protest exchange." Held sufficient to dispense with the preliminary proof of presentment and protest, and that it might be inferred that the protested exchange mentioned in the account referred to the bill in question, it being of the same amount and no other bill being shewn between the parties. *Bulloch v. Binney*, N. B., 1 A. 131.

12. In an action against the drawer of a foreign bill, the protest is evidence of an acceptance payable at a particular place, and of due presentment at that place. *Tarratt v. Wilmot*, N. B., 1 A. 353.

13. The certificate of the notary, that he left the notice of protest with the agent of the indorser, is not *prima facie* evidence of the agency. *Drumm v. Bradfute*, 18 La. An. 680.

Protest.

The "noting" mentioned in section 51, sub. 4, and section 92, is different from the "noting" provided for in the Act of 1849; it is not a deed complete in itself, but is a mere minute made by a notary on a dishonored bill at the time of its dishonor. The formal notarial protest may be extended at any time, by any notary, "as of the date of the nothing" sect 51, (4) and 92. This noting should therefore consist of the details necessary to the drafting of the deed of protest, when required.

In the Province of Quebec, all bills and notes must be protested by a notary, or by a justice of the peace when the notary is not accessible. The notice of protest must also be given by a notary, section 51. In the remainder of the Dominion, the office of a notary or justice of the peace is required only in the case of a foreign bill or foreign note; sections 51 and 88.

The essentials of a protest are defined in section 51, subs. 4, 6, 7, 8 and 9. Forms of noting, protest and notice of protest may also be found in the schedules annexed to the Act. Finally, sub section 10 reproduces the old Canadian law, which forbids the clerk, teller, or agent of any bank from acting as notary in the protesting of any bill payable at that bank. C. C. St. 1859, ch. 57, 1, 3; Ca. R. S. 1886, ch. 123, s. 11.

Protest may be made "at any time after three o'clock in the afternoon," sec. 51 (b); although presentment may be made by the holder either in the forenoon or the afternoon of the last day of grace. Therefore banks must keep their doors open on Saturdays after three o'clock as well as any other day to permit the protest of all bills in Quebec and of foreign bills in the remainder of the Dominion.

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Section 51(5) has introduced a new form of protest, that which § 52.
 may be made for better security when the acceptor becomes bankrupt or suspends payment before maturity of the bill. Under some of the continental codes, security can be demanded in such a case from the drawer and indorsers. In England and Canada, under sections 51 and 64, the only effect of a protest for better security is that the bill may be accepted for the honor of the drawer or indorsers. As to the acceptor himself, his insolvency, at least in the Province of Quebec, gives the holder the right to treat the bill as dishonored, C. C. L. C. Art. 1092. As regards the drawer and indorsers, he is bound to wait until maturity, and then make the necessary diligence, just as if the principal debtor had not become insolvent.

52. When no place of payment is specified in the bill or acceptance, presentment for payment Liability of acceptor as to presentment.
 is not necessary in order to render the acceptor liable ;

(2) When a place of payment is specified in the bill or acceptance, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures ; but if any suit or action be instituted thereon before presentation, the costs thereof shall be in the discretion of the court ; (1)

(3) In order to render the acceptor of a bill liable it is not necessary to protest it, or that notice No protest or notice necessary.
 of dishonor should be given to him ;

(4) Where the holder of a bill presents it for Presentment for payment.
 payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill

(1) See sections 45, 86 and 91.

§ 52. is paid the holder shall forthwith deliver it up to the party paying it. ⁽¹⁾

The costs shall be in the discretion, etc. :—

1. In Québec, a note payable at a particular place, must be presented as against the maker, otherwise the holder will not get his costs if funds be provided for it at that place and the debt be tendered in court. *Mirreault v. Lajoie*, 9 R. L. R. 382; *Archer v. Lortie*, 3 Q. L. R. 159; *Crépeau v. Moore*, 8 Q. L. R. 197; *La Rocque v. André*, 2 L. C. R. 335; *Mount v. Dunn*, 4 L. C. R. 348; *Shuter v. Paxton*, 5 L. C. J. 53. But see *O'Brien v. Stevenson*, 15 L. C. R. 265. Under the Act, the maker or acceptor is not discharged by want of presentment, unless there be "an express stipulation to that effect." The words "there and not elsewhere" will not constitute such "an express stipulation."

2. In N. B., if a bill be payable at a particular place, presentment is necessary before bringing action against maker. *Ratchford v. Griffith*, 2 Kerr, 112; *Chander v. Beckwith*, Ber. 268.

3. In Ontario, presentment was held necessary as against maker. *McIver v. McFarlane*, 1 Ont. Dig. 493; *MacAulay v. McFarlane*, *ibid.* Held, in appeal, that it was not necessary. *Wilson v. Brown*, 6 A. R. 87. Even if one is merely surety of the other. *Wilson v. Brown*, 6 A. R. 87; *McDonald v. McArthur*, 8 A. R. 553.

4. In Manitoba, presentment was not necessary as against the maker, unless the latter was damaged. *Biggs v. Wood*, 2 Ma. R.

(1) *Cousineau v. Lecours*, M. L. R. 4 S. C.; *Jordan v. Coates*, N. B. 2 A. 107.

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§ 53.*Liabilities of Parties.*

53. A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument.

Funds in
hands of
drawee.

See section 17, nn. 15 to 21, and notes under sect. 23.

1. In Quebec before the Act, the giving a cheque on a bank effected a transfer from the drawer to the payee of an amount from the drawer's funds on deposit equal to the amount of the cheque, and presentation of such cheque by the holder to the bank was equivalent to a signification of the transfer. *Farler v. Molsons Bank*, 23 L. C. J. 293; *Dorion v. Dorion*, 5 L. N. 130. See section. 73 (c).

2. In Scotland and France, the drawing of a bill is equivalent to a transfer of the provision in the hands of the drawee. See *Ross*, 1 *Leal. Cass.* 12; *Chalmers*, 169; *Gilbert sur Sirey*, C. C., art. 116, n. 13 *et seq.*, p. 76; *Jousse*, *Ord.* de 1673; 2 *Fardessus*, 249.

3. Otherwise in England and the United States. *Shroeder v. Central Bank*, 34 L. T. N. S. 735; *Hopkinson v. Forster*, L. R., 19 Eq. 74; *Snand v. Du Buisson*, L. R., 18 Eq. 283; *Vaughan v. Halliday*, L. R., 9 Ch. 561; *Car v. National Bank*, 107 Mass. 45; *Bank of Louisiana v. Bank of New Orleans*, L. R., 6 H. L. 352; *People v. Merchants' Bank*, 78 N. Y. 269; *Coates v. Doran*, 20 Cent. L. J. (Mo.) 36; 2 *Randolph*, 282; *Chalmers*, 168.

4. But where a specific amount or certain goods have been deposited and received by the drawee expressly for the purpose of providing for a bill, the holder might recover the same as received for his own use. *Taylor v. Bushong*, 100 Penn. St. 23; *Van Allen v. American Nat. Bank*, 3 Lans. 519; *Robey v. Ollier*, L. R., 7 Ch. 695; *Ranken v. Alfara*, 5 Ch. D. 786; *Donat*, 21st August, 1844, S. V. 45, 2, 158; *Lyon*, 9th August, 1848, S. V. 49, 2, 164; *Gilbert sur Sirey*, art. 116. *Boistel*, 525.

5. Provision made by the drawer for the payment of a bill cannot be applied by the drawee to the payment of another debt due to him. *Cass.* 18th May, 1868, D. 68, 1, 323; *Torrance v. Bank of B. N. A.*, L. R., 5 P. C. 24; C. L. art. 1190; *Girouard, Lettres de Change*, p. 116. *Dupuis v. Evans*, 12 L. N. 251; *Moodie v. Jones*, 19 R. L. 516. C. C. art. 1190. See section 59, n. 53.

6. Provision means that the drawee is, at the time of maturity, the debtor of the drawer or of some person for whose account the bill has been drawn, called *le donneur d'ordre*, or that the drawee at the time of maturity has funds, valuable securities or goods, out of which

§ 53. the bill could be paid. Req. 21st May, 1884; D. 84, 1, 291; Gilbert *sur Sirey*, art. 16, notes; 2 Pardessus, 243; Cass. 1st February, 1836; Cass. 30th May, 1841; Cass. 3rd August, 1835; 1 Bedarride, 206; 4 Alauzet, 87.

7. The mere fact that the drawee is indebted to the drawer creates no obligation on his part to accept the bill, except in the case of bills on a banker where the drawer has funds to draw against. *Grant v. Austen*, 3 Price, 58; N. Y. Bank *v. Gibson*, 5 Duer, 574; *Goodwin v. Roberts*, L. R., 10 Ex. 351; *Pott v. Clegg*, 16 M. & W. 321; *Foley v. Hill*, 2 H. L. Cas. 28; *Re Agra Bank*, 36 L. J. ex. 151; *English Credit Co. v. Arduin*, L. R., 5 H. L. 64; *Lyon*, 20th Dec., 1845, S. V. 48, 2, 177.

8. If a bill of exchange be drawn against a bill of lading, which is returned by the payee, the drawee will not be bound to accept the bill. *Schurichardt v. Hall*, 36 Md. 590.

9. The delivery of the bill of lading to the holder of a bill of exchange operates as a pledge upon the goods mentioned in the bill of lading to secure the payment of the bill of exchange and other liabilities according to agreement which may be proved by verbal evidence. Cass. 15th December, 1856, D. 56, 1, 115; Cass. 17th August, 1859, D. 59, 1, 347; *Boistel*, 624; *Thompson v. Molsons Bank*, Ca. 16 S. C. R. 664; *Watson v. Johnson*, 33 L.C. J. 71. See *infra*, n. 13.

10. The loss of provision consisting of specie, goods or valuable securities deposited with the drawee without any fault on his part, falls upon the drawer. 2 Pard. 243; 1 Bed. 214.

11. The defendant placed timber in the plaintiff's hands as security or the payment of a promissory note, under an agreement that the timber was not to be sold before 1st November without defendant's consent, but after that day, the plaintiff to be at liberty to sell, after giving the defendant fourteen days' notice; the plaintiff sold the timber after the 1st November, but without giving the notice.

Held (*Ritchie, J., dubitante*), that though the defendant might be entitled to damages in an action of trover, or on the agreement for a wrongful sale of the timber, he was not entitled to credit as a payment, in an action on the note, for more than the proceeds of the sale, though that was less than the highest market value of the timber. *Kinnear v. Ferguson*, N. B., 4 A. 391.

12. It is no defence to an action brought by the plaintiff, a merchant in Liverpool, as endorsee of a bill of exchange drawn by the defendant on one J. W., at Liverpool, and remitted to the plaintiff by his agent at Saint John, in paying for moneys collected, that the bill was drawn against a ship and cargo, when the owners had consigned to the plaintiff instead of sending them to J. W., the defendant's agent, as had been originally intended; the plaintiff not having been privy to the arrangement, and having in fact applied the proceeds of the ship and cargo to the payment of other demands which he had against the owner. *Hatton v. Wilnot*, 2 Kerr, 324.

13. On the 8th of August, 1888, W. J. made his promissory note for \$792.67, payable four months after date to the order of J. J., for the accommodation of the latter, who agreed to pay the said note as if he had been the maker. On the 23rd August, 1888, the said note was re-endorsed by J. J. and handed over to W. W., who discounted it for him and at the same time J. J. transferred to W. W. 35 cases of gum valued at \$1500, as collateral security for advances and liabilities by endorsing the bill of lading of the same to W. W., who subsequently

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appropriated the said gum to his own use. At the time of the above transfer W. W. claimed that J. J. was liable to him for the sum of \$3168.10, for advances on a promissory note previously discounted by him for J. J. On the maturity of the said note, W. W. brought action against W. J. for its amount.

Held in appeal, 27th November 1890, reversing the judgment of the Court below, 33 L. C. J. 71. that, as at the time of the transfer of the 35 cases of gum to the appellant, J. J. was the sole proprietor of the gum, and there was no question as to his solvency, there was nothing at that time to prevent him from paying any creditor in full, or to prevent him from transferring the gum to the appellant either as payment for present advances or as security for previous advances. See *supra*, n. 9.

SECURITIES FOR BILLS OF EXCHANGE.

Section 53 seems to introduce a very important change Provision, into the law of Quebec, as laid down in *Marler v. The Molsons Bank*, and the consequences will be numerous and important. The drawing of a bill does not operate as an assignment of the provision in the hands of the drawee; therefore it may be withdrawn by the drawer as long as the bill is not accepted. It may be also claimed by the creditors of the drawer who has become insolvent before the acceptance. *Yates v. Hopper*, 19 L. J. C. P. 180. It will also fall into the mass of the assets of the acceptor if he should fail during the currency of the bill. It may be also attached by the creditors at any time before the drawee has accepted or promised to accept. 2 Randolph, 282. If the drawing of a bill were to operate as an assignment of the provision, as is yet the law in Scotland (an exception having been made in its favor by the English Act), the consequence would be just the reverse. *Gilbert sur Sirey*, art. 116; *Cass.* 2nd July, 1883, D. 84, 1, 272; *Req.* 21th May, 1884, D. 84, 1, 291; *Req.* 20th May, 1885, D. 86, 1, 82; *Dijon*, 27th December, 1871, D. 74, 2, 237.

But these general principles do not apply to the case of a provision made under a special agreement, the relations of the parties being then regulated by the terms of that agreement, as illustrated above, *supra*, nn. 4 and 5.

It must be remarked that the interpretation given by the French courts has not been adopted by the Belgian courts, who seem to maintain the principle laid down in section 53. *Namur*, Dr. Com., p. 248 et seq.; *Cass. B.*, 29th Jan., 1846, 46, 1, 251; *Brussels*, 19th Jan., 1829, 21st Feb. and 2nd Aug.,

§ 53. 1839, 13th Aug., 1860, 61, 2, 5; Ghent, 4th April, 1855. Therefore Namur conclu les: "Aussi longtemps que le tiré n'a pas accepté, les créanciers du tireur peuvent saisir-arrêter la provision entre ses mains. Après cette saisie, le tiré ne peut plus, même en acceptant, porter atteinte aux droits qu'elle a conférés aux créanciers, p. 256.....1° Si la provision consiste dans une créance du tireur sur le tiré, le porteur n'aura vis-à-vis du tiré qu'un droit d'obligation. En conséquence, il ne pourra réclamer qu'un dividende dans la faillite, à l'instar des autres créanciers. 2° Il en sera de même, si la provision consiste dans le prix de marchandises dont la propriété a été transférée au tiré, car le porteur ne pourra encore invoquer qu'un droit de créance. 3° Si le tireur a fait un dépôt entre les mains du tiré, sans lui transférer la propriété, et sous la condition que ce dépôt sera spécialement affecté au paiement de la lettre, le porteur pourra, en exerçant les droits du tireur dont il est le créancier, revendiquer les choses objets du dépôt, et se faire payer sur le prix. Mais, dans cette hypothèse, les autres créanciers du tireur pourraient intervenir pour partager avec le porteur le produit de l'action, puisque, comme nous l'avons vu au paragraphe précédent, le porteur n'est pas propriétaire de la provision," p. 258.

This discussion between the Courts of France and Belgium possesses no longer any practical value for the Province of Quebec. The parliament of Canada has settled it by section 53 of the Act.

The question as to whether the drawer had provided for the bill or not becomes of importance, when he claims that he is discharged by want of presentment and notice of dishonor. See sections 45, 46, 47 and 50, especially 46 (c), n. 22.

Chalmers, at the end of his admirable book, pp. 275 to 283, has condensed the English jurisprudence upon the subject of securities for bills of exchange, and his remarks are so concise and comprehensive, that it is thought advisable to reproduce them here *verbatim* :—

Rights of Drawer.

Rule 1. Apart from special contract : (1) Where goods are sold, to be paid for by buyer's acceptance of seller's draft, and the acceptor fails or dishonors the bill, the lien of the drawer as unpaid vendor

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thereupon revives, if he has not parted with the possession of the goods or can stop them in transitu; and it is immaterial that the drawer has negotiated the bill. *Gunn v. Bolekow, Vaughan & Co* (1875), L. R., 10 Ch. 491; Cf. *Ex parte Chalmers* (1873), L. R., 8 Ch. at p. 292; *Ex parte Lambton* (1875), L. R., 10 Ch. at p. 415.

(2) Where an agent buys goods for his principal, and draws on the principal for the price, his rights in this respect are the same as those of an ordinary vendor. *Ex parte Banner* (1876), 2 Ch. D. at p. 287, C. A.; Cf. *Ex parte Gomez* (1875), L. R., 10 Ch. at p. 645.

It is essential to distinguish between the sale of goods to the acceptor, where the property in them vests absolutely in him, subject only to the vendor's lien until they reach his possession, and in the case of goods which are sent to the acceptor as cover for the bill, where there is a kind of mixed property in the goods, both drawer and acceptor having a defeasible interest therein. *Id.* See, too, *Ex parte Lambton* (1875), L. R., 10 Ch. at p. 416. The rights and duties of a commission merchant who buys for a foreign principal are explained by Lord Blackburn in *Ireland v. Livingston. Ireland v. Livingston* (1872), L. R., 5 H. L. at p. 408.

Rule 2. Where the drawer of a bill remits goods or securities to the drawee as cover for the bill, and in consequence of the drawee's failure is obliged to take up the bill, he is entitled to the return of any such goods or securities as the drawee may hold unrealized at the time of his failure. Cf. *Ex parte Broad* (1884), 13 Q. B. D. 740, C. A.; *Ex parte Derer* (1885), 14 Q. B. D. 611, at p. 624, per Cotton, L. J., C. A.; and see *Rule 4.*

Rights of Drawee or Acceptor.

Rule 3. Where the drawer of a bill of exchange remits goods or securities to the drawee as cover for it, and the drawee accepts, he thereby acquires a lien upon or right to the goods or securities. *Ex parte Brett* (1871), L. R., 6 Ch. at p. 841; *Ex parte Oriental Bank Corporation* (1874), 30 L. T. 803, L. J. J.; *Re Pary's Patent Fabric Co.* (1876), 1 Ch. D. 631; *Lutscher v. Comptoir d'Escompte* (1876), 1 Q. B. D. 709; Cf. *Ex parte Banner* (1876), 2 Ch. D. at p. 287, C. A.; see, too, *Steele v. Stuart* (1866), L. R., 2 Eq. 84. If the drawee do not accept he has no right to or lien upon the goods and securities. *Shepherd v. Harrison* (1871), L. R., 5 H. L. 116; see, at p. 133, per J. L. Cairns, and the comment on this case in *Ex parte Banner* (1876), 2 Ch. D. at p. 288, C. A.; see, too, *Torrance v. Bank of British America* (1873), L. R., 5 P. C. 246.

ILLUSTRATIONS.

1. A. consigns goods to B., and draws on him for the price. A. sends the bill of lading and bill of exchange to his own agent who forwards them to B., requesting him to accept the bill. If B. do not accept the bill of exchange he cannot retain the bill of lading. *Shepherd v. Harrison* (1871), L. R., 5 H. L. 116.

2. A., the principal, sends goods to B., his agent, on the terms that B. is to sell the goods, receiving a commission, and to accept A.'s drafts in proportion to the goods sent, and if the proceeds of the goods do not cover the acceptances in full, A. is to remit the difference. B. accepts for 200*l.* Before the bill matures A., the drawer, fails. B.

§ 53. has a lien on the goods to the extent of 200*l*. *Re Pary's Patent Fabric Co.* (1876), 1 Ch. D. 631; see *passim Ex parte Dickin* (1878), 8 Ch. D. 377.

3. A. consigns goods to B. for sale, draws on him for the price, and negotiates the bill of exchange with bill of lading attached. B. accepts the bill, payable on delivery of bill of lading. This operates as a pledge of B.'s interest in the goods to the holder, who becomes, as regards B., a secured creditor. *Ex parte Brett* (1871), L. R., 6 Ch. at p. 841.

Lord Cairns points out in *Banner v. Johnston* (1871), L. R., 5 H. L. at p. 174: That where a bill is only allowed to be drawn against shipments or against bills of lading, the stipulation is for the assurance and protection of the drawee, and not for the benefit of the holder. In France, it seems, the property in the goods would pass with the bill. See *Nouquier*, § 715, and Belgian Code, Art. 26.

Rule 4. If the acceptor fails during the currency of the bill, or dishonors it at maturity, his lien upon or right to the goods or securities is thereby determined, and he holds them at the disposition of the drawer. *Tooke v. Hollingworth* (1793), 5 T. R. 215; approved *Ex parte Banner* (1876), 2 Ch. D. at p. 289, C. A.; *Ex parte Kelly & Co.* (1879), 11 Ch. D. 306, C. A.; *Re Gothenburg Commercial Co.* (1881), 29 W. R. 358, C. A.; Cf. *Ex parte Smart* (1872), L. R., 8 Ch. Ap. at p. 224.

ILLUSTRATIONS.

1. A. draws on B., and remits to B. bills of other parties which he holds to provide B. with funds. B. accepts, fails before his acceptances mature, and compounds, paying the bill-holders 5*s*. in the pound. If B. realizes the bills sent him as cover, A. is entitled to the balance of the proceeds of such bills as were in specie at the time of the failure, after deducting the actual amount paid by B. on his acceptances. *Ex parte Gomez* (1875), L. R., 10 Ch. 639.

2. An agent buys goods for his principal, remits them to him, and draws on him for the price. The principal accepts the bill, but fails before it matures. The property in the goods does not re-vest in the drawer, for the goods are the principal's absolutely. *Ex parte Banner* (1876), 2 Ch. D. 278, C. A.; see at p. 289; see *Banco de Lima v. Anglo-Peruvian Bank* (1878), 8 Ch. D. 160.

3. A bill for 400*l*. is accepted to accommodate the drawer. The drawer forwards to the acceptor the bill of a third party for 400*l*. to provide for the acceptance. The acceptor discounts the remitted bill, being entitled to do so by the course of dealing, and fails before his acceptance matures. The drawer is not entitled to the proceeds of the remitted bill. *Ex parte Broad* (1884), 13 Q. B. D. 740, C. A.; Cf. *Ex parte Dever*, *Re Suse* (1884), 13 Q. B. D. 766, C. A.; *aliter*, it seems, if the security were in specie at the time of the failure.

4. A., in America, consigns cheese to a factor in England, and draws on him a bill running:—"Pay to the order of C. 1,000*l*., and charge the same to account of cheese, per *Britannic*, as advised." The same day A. writes to the factor, enclosing bills of lading for the cheese, and saying: "Against these we value on you in favor of C." A., the drawer, fails, and the factor refuses to accept. C., the bill-holder, has no claim on the goods. *Brown, Shipley & Co. v. Kough*

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(1885), 29 Ch. D. 848, C. A.; Cf. *Phelps v. Comber* (1885), 29 Ch. D. 813, C. A. They belong to the drawer's trustee.

The case of *Brown, Shipley & Co. v. Kough* (1885), 29 Ch. D. 848, C. A., seems finally to dispose of the often discredited case of *Frith v. Forbes* (1862), 4 De G. F. & J. 409. By treating it as an erroneous finding on a question of fact. As Mellish, L.J., says, in *Robey v. Ollier* (1872), L. R., 7 Ch. at p. 699:—"A mercantile man who is intended to have a lien on a cargo expects to have the bill of lading annexed (to the bill of exchange); if there is no bill of lading annexed he only expects to get the security of the bill itself. In *Frith v. Forbes*, the Court considered that, taking all the letters together, there was an equitable assignment (in favor of the bill-holder)."

Where remittances are made to cover bills, and the drawer by a collateral agreement has assigned his rights to a particular holder, the acceptor holds the remittances for the benefit of that holder as equitable assignee. *Ex parte Carriek* (1858), 2 De G. & J. 208.

Rights of Holder.

Rule 5. Where the drawee or acceptor of a bill is indebted to, or has in his hands funds of the drawer sufficient to meet it, the bill does not operate as an assignment of the debt or funds in favor of the holder. See sect. 53, and *Shand v. Du Buisson* (1874), L. R., 18 Eq. 283, bill; *Hopkinson v. Forster* (1874), L. R., 19 Eq. 74, cheque; *Schroeder v. Central Bank* (1876), 34 L. T. N. S. 735, cheque.

Such an assignment can only be effected by agreement extraneous and collateral to the bill. *Thomson v. Simpson* (1870), L. R., 5 Ch. 659; *Citizens' Bank of Louisiana v. New Orleans Bank* (1873), L. R., 6 H. L. 352; see at pp. 360 and 366.

ILLUSTRATIONS.

1. A., having a fund in B.'s hands, draws on B. a bill for the exact amount of the fund. This does not operate as an assignment of the fund to the payee. *Shand v. Du Buisson* (1874), L. R., 18 Eq. 283.

2. The holder of a bill purchases it on the faith of a verbal representation made by the drawer that funds sufficient to meet it have been remitted to the drawee, that it is drawn against those funds, and that it certainly will be paid. The drawer fails, and the drawee refuses to accept the bill, though he has funds sufficient to meet it. The bill-holder is not entitled to those funds, and the drawee is justified in handing them over to the drawer's trustee. *Citizens' Bank of Louisiana v. New Orleans Bank* (1873), L. R., 6 H. L. 352.

This rule does not apply to Scotland. See sect. 53.

Rule 6. Subject to *Rule 7* (double insolvency), where a bill of exchange is on the face of it expressed to be drawn against specific goods or securities, the holder does not obtain thereby any charge upon the goods or securities if the bill be dishonored. *Iman v. Clare* (1858), Johns. R. at p. 776; *Robey v. Ollier* (1872), L. R., 7 Ch. 695, at p. 698.

Such charge can only be created by agreement collateral to the bill, and in favor of the person with whom the agreement is made. *Ibid.*, see *Ex parte Imbert* (1857), 1 De G. & J. 152; *Ex parte Carriek* (1858), 2 De G. & J. 208; *Ranken v. Alfaro* (1877), 5 Ch. D. 786, C. A., where the holder's charge has been upheld; and *Latham v.*

§ 53. *Chartered Bank* (1874), L. R., 17 Eq. 205, for the construction of a letter of hypothecation.

1. Under a credit, No. 20, a consignor of cotton is entitled to draw on the consignee "against cotton purchased according to instructions." The consignee accepts a draft expressed to be drawn "against credit, No. 20," receives the cotton, but fails before the bill matures and dishonors it. The holder has no charge on the cotton. *Banner v. Johnston* (1871), L. R., 5 H. L. 157.

2. A. consigns by ship *Acacia* a cargo to B., and draws a bill on B. running, "Pay to my order 100*l.*, which place to account cargo per *Acacia*," B. promises A. to protect the draft. An endorsee has no charge on the cargo if B. refuses to accept the bill. *Robey v. Ollier* (1872), L. R., 7 Ch. 695.

3. A. in India sells and ships cotton to B. in England, and draws for the price a bill running, "Pay C. or order 1,000*l.*, and place the same to account cotton shipments as advised." B. promises the drawer to protect the bill, accepts it, and gets the bills of lading. Before the bill matures, B. fails, and A.'s English house takes it up. The English house has no charge on the cotton. *Ex parte Arbuthnot* (1876), 3 Ch. D. 477, C. A.

4. Bills are drawn under a credit against specific consignments. By the terms of the credit, which is shown to the holder, the bills are to be accompanied by bills of lading which are to be surrendered to the drawee on acceptance. If the acceptor fails, the bill-holder has no claim on the consignments or their proceeds. *Ex parte Dever, Re Suse* (1884), 13 Q. B. D. 766, C. A. The appropriation is for the benefit of drawee, not holder.

See, further, Illustration 4 to Rule 4, *ante*, p. 277, and the note at the end of that rule.

Rule 7. Where the estates of two insolvent, *Hickie's Case* (1867), L. R., 4 Eq. 226, parties, both liable to the holders of bills of exchange, *Vaughan v. Halliday*, 1874, L. R., 9 Ch. Ap. 561, are administered under the control of a court of justice, *Powles v. Hargreaves* (1853), 23 L. J. Ch. 1, and one of those parties holds goods or securities of the others, *Ex parte Lambton* (1875), L. R. 10 Ch. Ap. 405, see at pp. 416, 417; *Ex parte Banner* (1876), 2 Ch. D. at p. 287, C. A.; and see *Banner v. Johnston* (1871), L. R., 5 H. L. at p. 174, as cover for the bills, *Levi & Co.'s Case* (1869), L. R., 7 Eq. 449; *Ex parte Alliance Bank* (1869), L. R., 4 Ch. Ap. 423, the holders are entitled to have the proceeds of those goods and securities applied in payment of the bill. *Ex parte Waring* (1815), 19 Ves. 345; *Ex parte Parr* (1818), Buck. 191; *City Bank v. Luckie* (1870), L. R., 5 Ch. Ap. 773; *Bank of Ireland v. Perry* (1871), L. R., 7 Ex. 14; *Ex parte Dechurst* (1873), L. R., 8 Ch. Ap. 965, provided that the goods or securities remained unrealized at the time of the failure of the party holding them. *Ex parte Dever, R. Suse* (1885), 14 Q. B. D. 611, C. A.; *aliter*, if realized rightfully or wrongfully; per Brett, M. R., at p. 622.

If the proceeds of the goods and securities do not equal the amount of the bill, the holders are entitled to prove as creditors for the balance. *Powles v. Hargreaves* (1853), 3 De G. M. & G. 430; see at p. 452, and form of order at p. 445; also form of decree in *City Bank v. Luckie* (1870), L. R., 5 Ch. Ap. at 778; *Ex parte Joint Stock Discount Co.* (1875), L. R., 10 Ch. Ap. 198, reduction of proof. *Quære*, if *Loder's Case* (1868), L. R., 6 Eq. 491, be right?

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ILLUSTRATIONS.

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1. The drawer and acceptor of a bill both become bankrupt. The acceptor holds short bills belonging to the drawer as cover for his acceptance. The holder is entitled to the proceeds of these bills when realized. *Ex parte Waring* (1815), 19 Ves. 345.

2. The drawer of a bill becomes bankrupt. The acceptor dies insolvent. By agreement with the acceptor the drawer holds certain goods as security for the amount of the bill. The holder is entitled to the proceeds of these goods. *Powles v. Hargreaves* (1853), 3 De G. M. & G. 430.

3. The drawer and acceptor of a bill become bankrupt. The acceptor accepted under a guarantee from a bank that the drawer should provide funds to meet the bill and keep him out of cash advance. The holder is not entitled to the benefit of the guarantee. *Ex parte Stephens* (1868), L. R., 3 Ch. Ap. 753.

4. The drawer and acceptor of a bill become bankrupt. The acceptor holds securities which were deposited by the drawer as security for his current account, before the bill was drawn, and without reference to it. The holder is not entitled to the benefit of those securities. *Levi & Co.'s Case* (1869), L. R., 7 Eq. 449.

5. The drawer and acceptor of a bill, who are distinct firms in India and England respectively, but engaged in a joint adventure, become bankrupt. The bill is drawn specifically against a consignment of goods from the drawer to the acceptor. The holder is entitled to the proceeds of the consignment, subject to claims of the aggregate creditors of the two firms against the aggregate assets. *Ex parte Dewhurst* (1873), L. R., 8 Ch. Ap. 965; Cf. *Ex parte Manchester Bank* (1879), 12 Ch. D. at 779.

6. The drawer and acceptor of a bill become bankrupt, the drawer having sold goods to the acceptor and drawn on him for the price according to agreement. The holder is not entitled to the proceeds of the goods. *Ex parte Lambton* (1875), L. R., 10 Ch. Ap. 405.

7. The drawer and acceptor of a series of bills become bankrupt. According to the terms of the credit under which the bills are drawn, securities are remitted as cover for specific bills. The bill-holders are entitled to the benefit of the securities which remain unrealized in the hands of the acceptor at the time of his failure. The securities must be appropriated for the benefit of the holder of the bill they were remitted to cover, and not for the benefit of the holders of other bills drawn under the same credit. *Ex parte Dever, Re Suse* (1885), 14 Q. B. D. 611, C. A.

The rule above stated is generally known as the rule or doctrine of *Ex parte Waring*. It has been much misunderstood. The principle on which it is founded is the necessity of working out the equities between the two insolvent estates, each of which has a claim on the goods or securities forming the cover for the bill, which can only be satisfied by the application of the proceeds to meet the bill. It is not founded on, nor does it imply any property or interest in, the goods or securities on the part of the bill-holder. See per Lord Cranworth, and Turner, L. J., *Powles v. Hargreaves* (1853), 3 De G. M. & G. at 447, 458; per Lord Hatherley, *City Bank v. Luckie* (1870), L. R., 5 Ch. Ap. at 776; per Lord Cairns, *Banner v. Johnston* (1871), L. R., 5 H. L. at 174; per James, L. J., *Vaughan v. Halliday* (1874), L. R., 9 Ch. Ap. at 567.

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The rule in *Ex parte Waring* is a rule *positivi juris*, peculiar to English law. It embodies no universal principle of equity, and does not extend to Scotland. *Royal Bank of Scotland v. Commercial Bank* (1882), 7 App. Cas. 366, H.L. See the rule criticized by Lord Shelborne,

Explanation 1.—Each of the insolvent parties must be liable to the bill-holder in respect of the bill transaction, but it is not necessary that both of them should be liable as parties to the bill. *Vaughan v. Halliday* (1874), L. R., 9 Ch. Ap. at 568.

ILLUSTRATIONS.

1. A bill is drawn specifically against a consignment of goods. Drawer and drawee both become bankrupt, and the drawee refuses to accept. The holder is not entitled to the proceeds of the goods. *Ibid.*

2. A. in Scotland employs S. as his correspondent at Havannah, and B. as his correspondent in London. A. sends goods to S., and by arrangement between all parties draws on B. for the price. B. accepts. S. sends remittances in bills to B. to cover his acceptance. S. and B. become bankrupt. A. is entitled to the proceeds of the remittances if he takes up the bill. *Ex parte Smart* (1872), L. R., 8 Ch. Ap. 220.

Explanation 2.—It is not necessary that the two insolvent estates should be administered in bankruptcy. It is sufficient that they are both administered for the benefit of creditors under the control of a court of justice. *Powles v. Hargreaves* (1853), 3 De G. M. & G. 430, at 451, 458; *Hickies Case* (1867), L. R., 4 Eq. 226; *Ex parte General South American Co.* (1875), L. R., 10 Ch. Ap. 635; *Ex parte Gomez* (1875), L. R., 10 Ch. Ap. at 647, 648.

The term generally used is that both insolvent estates must be under a "forced administration." *Ex parte Dever* (1885), 14 Q. B. D. 611, at pp. 621, 625, C. A.

It is possible that where a debtor enters into a composition with his creditors under the Bankruptcy Act, 1883, his estate is sufficiently administered under the control of a court of justice to allow the doctrine of *Ex parte Waring* to apply. Cf. *Ex parte Gomez* (1875), L. R., 10 Ch. Ap. at 648; and see the status of a composition discussed in *Ex parte Rumboll* (1871), L. R., 6 Ch. Ap. 842, and *Gray v. Megrath* (1874), L. R., 9 C. P. at 230. By s. 10 of the Judicature Act, 1875, the bankruptcy rules as to proof, etc., are applied to the winding up of insolvent companies and to the administration of the estates of persons who have died insolvent.

Rights of Surety on Bill.

Rule 8. (1) Where a bill, which was accepted for value, is dishonored, and the drawer or an indorser is compelled to pay it, he is entitled to the benefit of any securities deposited by the acceptor with the holder to secure the payment of the bill which the holder had in his possession at the time of the dishonor of the bill. *Duncan, Fox & Co. v. N. & S. Wales Bank* (1880), 6 App. Cas., 1 H. L., overruling C. A.; see *First National Bank v. Word* (1877), 71 New York R. 405.

When a bill is accepted for value, the drawer and indorsers are

quasi surety in relation to the bill. *Fox & Co. v. N. & S. Wales Bank* (1880), 6 App. Cas., 1 H. L., overruling C. A.

(2) Where a bill is accepted for value, and the drawer or an indorser is compelled to pay it, he is entitled to the benefit of any securities deposited by the acceptor with the holder to secure the payment of the bill which the holder had in his possession at the time of the dishonor of the bill. *Duncan, Fox & Co. v. N. & S. Wales Bank* (1880), 6 App. Cas., 1 H. L., overruling C. A.

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quasi sureties for the acceptor, see *ante*, p. 172. See the limits of the relationship discussed by Lord Blackburn and Lord Watson. *Duncan, Fox & Co. v. N. & S. Wales Bank supra*, at pp. 19, 22.

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(2) Where an accommodation party is compelled to pay a bill, he is entitled to the benefit of any securities deposited by the person accommodated with the holder as security for the payment of the bill. *Becheraise v. Lewis* (1872), L. R., 7 C. P. at p. 377, per Willes, J., *Gray v. Seckham* (1872), L. R., 7 Ch. 680; Cf. *Pearl v. Deacon* (1857); 1 De G. & J. 461.

QUEBEC CODE ON COLLATERAL SECURITIES.

It would not be out of place to reproduce here the rules of the Quebec Code concerning the pledging or pawning of goods or other personal property. Article 1966 says: "Pledge is a contract by which a thing is placed in the hands of a creditor, or, being already in his possession, is retained by him with the owner's consent, in security for his debt." See also art. 1968.

It has been held under these articles that a debt may be given in pledge. *Farmer v. Bell*, 6 Q. L. R. 1; *Leonard v. St. Armand*, 13 Q. L. R. 317.

Art. 1969. "The pawn of a thing gives to the creditor a right to be paid from it by privilege and preference before other creditors.

"The privilege subsists only while the thing pawned remains in the hands of the creditor or of the person appointed by the parties to hold it."

Art. 1745. "Bills of lading, warehouse-keeper's or wharfinger's receipts or orders for delivery of goods, bills of inspection of potash or pearlash, and all other documents used in the ordinary course of business, as proof of the possession or control of goods, or purporting to authorize, either by endorsement or by delivery, the possessor of any such document to transfer or receive goods thereby represented, are deemed documents of title within the provisions of this chapter." C. S. C., ch. 59, sec. 7.

Held:—That to acquire a lien under articles 1745, 1966 and 1967 of the Civil Code, there must be an actual delivery or possession of the property pledged or of some document in use in the ordinary course of business, entitling the bearer thereof to claim possession of such property. *Ross v. Molson's Bank*, 2 Q. B. R. 82; *Cary v. La Compagnie de Papier du Canada*, 10 R. L. 501; *In re Lemay et al.*, Insolvents, 6 Q. L. R. 35; *Gordon v. Hotte*, 2 L. N. 348; *Cushing v. Dupuis*, P. C., 5 App. Cas. 409; *Fairbanks v. Barlow*, M. L. R., 2 Q. B. 332; 14 Ca. S. C. R. 218; *Moffat v. Burland*, 4 Q. B. R. 59.

Art. 1971. "Saving pawnbrokers, no creditor can, in default of payment of the debt, dispose of the thing given in pawn. He may cause it to be seized and sold in the usual course of law under the

§ 53.

authority of a competent court, and obtain payment by preference out of the proceeds. This provision, however, does not apply to timber which is pledged under the provisions of the Act 29 Victoria, chapter 19, nor to banks as regards goods and merchandise given in security, under the provisions of the laws respecting banks and banking.

The creditor may also stipulate that in default of payment he shall be entitled to retain the thing. 41 V. c. 3, s. 141; R. S. C., c. 120 and 128. R. S. Q. art. 6242. Bank Act 1890, ch. 31, ss. 74 to 79; Quebec Savings Bank Act 1890, Ca. St., ch. 32, ss. 20, 22.

As to the sale of articles pawned to licensed pawnbrokers, see R. S. Q. arts. 975 et seq.

As to the notice required by law to be given by banks before selling goods pledged to them, see R. S. C., cap. 120, s. 58, replaced by sec. 78 of Bank Act 1890.

Art. 1972. "The debtor is owner of the thing pledged until it is sold or otherwise disposed of. It remains in the hands of the creditor only as a deposit to secure his debt."

Art. 1975. "The debtor cannot claim the restitution of the thing given in pledge, until he has wholly paid the debt in principal, interest and costs, unless the thing is abused by the creditor."

"If another debt be contracted after the pledging of the thing and become due before that for which the pledge was given, the creditor is not obliged to restore the thing until both debts are paid."

Special provisions regulate pledges made to pawnbrokers and chartered banks.

Art. 1979. "The special rules relating to the trade of pawnbroking are contained in the laws respecting pawnbrokers and pawnbroking."

"The Federal Acts respecting banks and banking, in so far as banks are concerned, and chapter 54 of the Consolidated Statutes of Canada, as respects private persons, contain special provisions for the transfer by endorsement of bills of lading, specifications of timber and receipts by warehousemen, millers, wharfingers, masters of vessels or carriers, to incorporated banks or to private persons, as collateral security, and for the sale of the merchandise and effects represented by such instruments." C. C. 19:9; 41 V. c. 3, s. 141; R. S. Q. art. 6243. Ca. R. St., ch. 120, 128, replaced by Bank Act 1890, ch. 31.

The new Bank Act, c. 31, 1890, contains special provisions on the subject of pledges, collateral securities, bills of lading, warehouse receipts, etc., which will be found in sections 64 to 79, under the heading "Business and Powers of the Bank." See also 52 Vict., c. 30, 1889, "An act relating to bills of lading."

BANK ACT, 1890, 53 VICT., c. 31.

In force on the 1st July 1891.

BUSINESS AND POWERS OF THE BANK.

64. The bank may open branches, agencies and offices, and may engage in and carry on business as a dealer in gold and silver coin and agencies.

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and bullion, and it may deal in discount and lend money and make advances upon the security of, and may take as collateral security for any loan made by it, bills of exchange, promissory notes and other negotiable securities, or the stock, bonds, debentures and obligations of municipal and other corporations, whether secured by mortgage or otherwise, or Dominion, Provincial, British, foreign and other public securities, and it may engage in and carry on such business generally as appertains to the business of banking; but, except as authorized by this Act, it shall not, either directly or indirectly, deal in the buying, or selling, or bartering of goods, wares and merchandise, or engage or be engaged in any trade or business whatsoever; and it shall not, either directly or indirectly, purchase, or deal in, or lend money, or make advances upon the security or pledge of any share of its own capital stock, or of the capital stock of any bank; and it shall not, either directly or indirectly, lend money or make advances upon the security, mortgage or hypothecation of any land, tenements or immoveable property, or of any ships or other vessels, or upon the security of any goods, wares and merchandise.

§ 53.

General powers of bank.

Certain business may not be transacted by the bank.

65. The bank shall have a privileged lien, for any debt or liability for any debt to the bank, on the shares of its own capital stock and on any unpaid dividends of the debtor or person liable, and may decline to allow any transfer of the shares of such debtor or person until such debt is paid; and the bank shall, within twelve months after such debt has accrued and become payable, sell such shares, and notice shall be given to the holder thereof of the intention of the bank to sell the same, by mailing such notice in the post office to the last known address of such holder, at least thirty days prior to such sale; and upon such sale being made, the president, vice-president, manager or cashier shall execute a transfer of such shares to the purchaser thereof in the usual transfer book of the bank,—which transfer shall vest in such purchaser all the rights in or to such shares which were possessed by the holder thereof, with the same obligation of warranty on his part as if he were the vendor thereof, but without any warranty from the bank or by the officer of the bank executing such transfer.

Bank to have lien on debtor's shares.

Sale of such shares.

Notice.

Transfer in case of sale.

66. The stock, bonds, debentures or securities, acquired and held by the bank as collateral security, may, in case of default to pay the debt, for securing which they were so acquired and held, be dealt with, sold and conveyed either in like manner and subject to the same restrictions as are herein provided in respect of stock of the bank on which it has acquired a lien under this Act, or in like manner as and subject to the restrictions under which a private individual might in like circumstances deal with, sell and convey the same, but without obligation to sell the same within twelve months.

Collateral securities may be similarly dealt with.

2. The right so to deal with and dispose of such stock, bonds, debentures or securities in manner aforesaid may be waived or varied by any agreement between the bank and the owner of such stock, bonds, debentures or securities, made at the time at which such debt was incurred, or if the time of payment of such debt has been extended, then by an agreement made at the time of such extension.

Right to do so may be waived.

67. The bank may acquire and hold real and immoveable property for its actual use and occupation and the management of its business, and may sell or dispose of the same, and acquire other property in its stead for the same purpose.

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§ 53.

Mortgages as additional securities.

68. The bank may take, hold and dispose of mortgages and *hypothèques* upon real or personal, immoveable or moveable property, by way of additional security for debts contracted to the bank in the course of its business; and the rights, powers and privileges which the bank is by this Act declared to have or to have had, in respect of real or immoveable property mortgaged to it, shall be held and possessed by it in respect of any personal or moveable property which is mortgaged or hypothecated to it.

Purchase of land under execution, etc.

69. The bank may purchase any lands or real or immoveable property offered for sale under execution, or in insolvency, or under the order or decree of a court, as belonging to any debtor to the bank, or offered for sale by a mortgagee or other encumbrancer having priority over a mortgage or other encumbrance held by the bank or offered for sale by the bank under a power of sale given to it for that purpose, in cases in which, under similar circumstances, an individual could so purchase, without any restriction as to the value of the property which it may so purchase, and may acquire a title thereto as any individual purchasing at sheriff's sale, or under a power of sale, in like circumstances, could do, and may take, have, hold and dispose of the same at pleasure.

Absolute title may be acquired.

70. The bank may acquire and hold an absolute title in or to real or immoveable property mortgaged to it as security for a debt due or owing to it, either by obtaining a release of the equity of redemption in the mortgaged property, or by procuring a foreclosure, or by other means whereby, as between individuals, an equity of redemption can, by law, be barred, and may purchase and acquire any prior mortgage or charge on such property: Provided always, that no bank shall hold any real or immoveable property, howsoever acquired, except such as is required for its own use, for any period exceeding seven years from the date of the acquisition thereof.

Titles to lands so acquired; power of sale, etc.

71. Nothing in any charter, Act or law shall be construed as ever having prevented or as preventing the bank from acquiring and holding an absolute title to and in any such mortgaged real or immoveable property, whatever the value thereof is, or from exercising or acting upon any power of sale contained in any mortgage given to it or held by it, authorizing or enabling it to sell or convey away any property so mortgaged.

As to advances for building ships.

72. Every bank advancing money in aid of the building of any ship or vessel, shall have the same right of acquiring and holding security in such ship or vessel, while building and when completed either by mortgage, *hypothèque*, hypothecation, privilege or lien, or purchase or transfer thereof, as individuals have in the land wherein such ship or vessel is being built, and for that purpose may avail itself of all such rights and means of obtaining and enforcing such security, and shall be subject to all such obligations, limitations and conditions as are, by the law of such Province, conferred or imposed upon individuals making such advances.

Warehouse receipts may be taken as collateral security.

73. The bank may acquire and hold any warehouse receipt or bill of lading as collateral security for the payment of any debt incurred in its favor in the course of its banking business; and the warehouse receipt or bill of lading so acquired shall vest in the bank, from the date of the acquisition thereof, all the right and title of the previous holder or owner thereof, or of the person from whom such goods, wares and merchandise were received or acquired by the bank, if the

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§ 53.

2. If the previous holder of such warehouse receipt or bill of lading is the agent of the owner of the goods, wares and merchandise mentioned therein, the bank shall be vested with all the right and title of the owner thereof, subject to his right to have the same re-transferred to him, if the debt, as security for which they are held by the bank, is paid;

When previous holder is an agent.

3. In this section the expression "agent" means any person intrusted with the possession of goods, wares and merchandise, or to whom the same are consigned, or who is possessed of any bill of lading, receipt, order or other document used in the course of business as proof of the possession or control of goods, wares and merchandise, or authorizing or purporting to authorize, either by indorsement or by delivery, the possessor of such document to transfer or receive the goods, wares and merchandise thereby represented; and such person shall be deemed the possessor of such goods, wares and merchandise, bill of lading, receipt, order or other document as aforesaid, as well if the same are held by any person for him or subject to his control as if he is in actual possession thereof.

Interpretation of "Agent."

74. The bank may lend money to any person engaged in business as a wholesale manufacturer of any goods, wares and merchandise, upon the security of the goods, wares and merchandise manufactured by him or procured for such manufacture;

Loans to whole sale manufacturers.

2. The bank may also lend money to any wholesale purchaser or shipper of products of agriculture, the forest and mine, or the sea, lakes and rivers, or to any wholesale purchaser or shipper of live stock or dead stock, and the product thereof, upon the security of such products, or of such live stock or dead stock, and the products thereof;

Loans to certain wholesale purchasers or shippers.

3. Such security may be given by the owner and may be taken in the form set forth in Schedule C to this Act, (1) or to the like effect;

Form of security.

(1)

SCHEDULE C.

FORM OF SECURITY UNDER SECTION SEVENTY-FOUR.

In consideration of an advance of _____ dollars, made by the (name of bank) to A. B., for which the said bank holds the following bills or notes (describe fully the bills or note held if any) the goods, wares and merchandise mentioned below are hereby assigned to the said bank as security for the payment, on or before the day of _____ of the said advance, together with interest thereon at the rate of _____ per cent. per annum from the day of _____ (or, of the said bills and notes, or renewals thereof, or substitution thereof, and interest thereon, (or as the case may be).

This security is given under the provisions of section seventy-four of "The Bank Act," and is subject to all the provisions of the said Act.

The said goods, wares and merchandise are now owned by _____ and are now in _____ possession, and are free from any mortgage, lien or charge thereon, (or as the case may be), and are in (place or places where goods are), and are the following: (particular descriptions of goods assigned).

Dated at _____

- § 53.** and by virtue of such security, the bank shall acquire the same rights and powers in respect to the goods, wares and merchandise, stock or products covered thereby, as if it had acquired the same by virtue of a warehouse receipt.
- When such security may be acquired.** **75.** The bank shall not acquire or hold any warehouse receipt or bill of lading or security under the next preceding section to secure the payment of any bill, note or debt, unless such bill, note or debt is negotiated or contracted at the time of the acquisition thereof by the bank, or upon the written promise or agreement that such warehouse receipt or bill of lading or security would be given to the bank; but such bill, note or debt may be renewed, or the time for the payment thereof extended, without affecting any such security;
- Exchange of warehouse receipt for bill of lading and vice versa.** **2.** The bank may, on shipment of any goods, wares and merchandise for which it holds a warehouse receipt, or security as aforesaid, surrender such receipt or security, and receive a bill of lading in exchange therefor, or, on the receipt of any goods, wares and merchandise for which it holds a bill of lading or security, as aforesaid, it may surrender such bill of lading or security, store such goods, wares and merchandise, and take a warehouse receipt therefor, or may ship them, or part of them, and take another bill of lading therefor;
- Penalty for making false statement.** **3.** Every one is guilty of a misdemeanor and liable to imprisonment for a term not exceeding two years, who wilfully makes any false statement in any warehouse receipt, bill of lading or security, as aforesaid;
- Penalty for alienating goods so secured.** **4.** Every one is guilty of a misdemeanor and liable to imprisonment for a term not exceeding two years, who having possession or control of any goods, wares and merchandise covered by any warehouse receipt, bill of lading or security as aforesaid, and having knowledge of such receipt, bill of lading or security, and without consent of the bank in writing, and before the advance, bill note or debt thereby secured has been fully paid, wilfully alienates or parts with any such goods, wares or merchandise, or wilfully withholds from the bank possession thereof upon demand after default in payment of such advance, bill, note or debt.
- As to goods manufactured from articles pledged.** **76.** If goods, wares and merchandise are manufactured or produced from the goods, wares and merchandise, or any of them, included in or covered by any warehouse receipt, or security, given under section seventy-four of this Act, while so covered, the bank holding such warehouse receipt or security shall hold or continue to hold such goods, wares and merchandise, during the process and after the completion of such manufacture or production, with the same right and title, and for the same purposes and upon the same conditions as it held or could have held the original goods, wares and merchandise.
- Prior claim of the bank over unpaid vendor.** **77.** All advances made on the security of any bill of lading or warehouse receipt, or security given under section seventy-four of this Act, shall give to the bank making such advances a claim for the repayment of such advances on the goods, wares and merchandise therein mentioned, or into which they have been converted, prior to and by preference over the claim of any unpaid vendor; but such preference shall not be given over the claim of any unpaid vendor who had a lien upon such goods, wares and merchandise at the time of the acquisition by the bank of such warehouse receipt, bill of lading, or security, unless the same was acquired without knowledge on the part of the bank of such lien.

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78. In the event of the non-payment at maturity of any debt secured by a warehouse receipt or bill of lading, or security given under section seventy-four of this Act, the bank may sell the goods, wares and merchandise mentioned therein, or so much thereof as will suffice to pay such debt with interest and expenses, returning the overplus, if any, to the person from whom such warehouse receipt, or bill of lading or security, or the goods, wares and merchandise mentioned therein, as the case may be, were acquired; but such power of sale shall be subject to the following provisions, namely:

§ 54

Sale of goods on non-payment of debt.

2. No sale without the consent in writing of the owner of any timber, boards, deals, staves, saw logs or other lumber, shall be made under this Act until notice of the time and place of such sale has been given by a registered letter, mailed in the post office to the last known address of the pledger thereof, at least thirty days prior to the sale thereof; and no goods, wares and merchandise, other than timber, boards, deals, staves, saw logs or other lumber, shall be sold by the bank under this Act, without the consent of the owner, until notice of the time and place of sale has been given by a registered letter, mailed in the post office to the last known address of the pledger thereof, at least ten days prior to the sale thereof;

Notice to be given before sale of goods pledged.

3. Every such sale of any article mentioned in this section, without the consent of the owner, shall be made by public auction, after a notice thereof, by advertisement, stating the time and place thereof, in at least two newspapers published in or nearest to the place where the sale is to be made; and if such sale is in the Province of Quebec, then at least one of such newspapers shall be a newspaper published in the English language, and one of other such newspaper shall be a newspaper published in the French language.

Sale by auction after notice.

51. The acceptor of a bill, by accepting it:—

Liability of acceptor.

(a) Engages that he will pay it according to the tenor of his acceptance;

(b) Is precluded from denying to a holder in due course;

(1) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill;

(2) In the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement;

(3) In the case of a bill payable to the order of a third person the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his endorsement.

§ 55.

See sections 24, 26, 31, 55 and 59.

1. Where a bill is drawn by a person signing as agent of a company upon a defendant who accepts the bill, the acceptance admits the signature of the agent and his authority from the company to draw the bill. It also precludes the setting up of any legal objections to the composition or description of the company or their ability to draw the bill. *Bank of Montreal v. De Latre*, U. C., 5 Q. B. 362. See notes under section 55. If the drawee or acceptor pays a forged cheque or bill, the loss is his own and he cannot recover from the drawer. 2 *Pard.* 202, 268, 340, 341, 345. *Paris*, 15th March, 1826, cited in 1 *Bédarride*, 299.

2. Where the drawee has accepted, after it had been discounted, a bill payable to the drawer's order, and forged both as to the signature of the drawer and his indorsement, Held, that the acceptor was entitled to recover back the amount he had paid to the bank who discounted the bill. *O. R.*, 12 Q. B. D. 39. In appeal the court was equally divided. *Ryan v. Bank of Montreal*, 14 A. R. 533; see also *Vagliano v. Bank of England*, 23 Q. B. D. 243. *Robarts v. Tucker*, 16 Q. B. 560, Ex.; *Garland v. Jacomb*, L. R., 3 Ex. 216; *Burgess v. Northern Bank*, 4 Bush. 600. See section 24, n. 3 and notes under section 55.

3. A bill purporting to be drawn by A. on B. is paid by B. Subsequently B. discovers that A.'s signature was a forgery. B. cannot recover the money from the holder to whom he paid it. *Price v. Neal*, 3 Burr. 1355.

4. C., the holder of a bill, purporting to be accepted payable at a bank, indorses it to D. for collection. D. obtains payment, and hands the money over to C. A week after the payment the bank discovers that the acceptance was a forgery. The bank cannot recover the money from C. *Smith v. Mercer*, 6 Taunt. 76.

Liability of
drawer.

55. The drawer of a bill, by drawing it:—

(a) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonored he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonor are duly taken;

(b) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse;

Liability of in-
dorser.

(2) The indorser of a bill, by indorsing it:—

(a) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonored he will compensate the

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holder or a subsequent indorser who is compelled § 55.
to pay it, provided that the requisite proceedings
on dishonor are duly taken;

(b) Is precluded from denying to a holder in due
course the genuineness and regularity in all res-
pects of the drawer's signature and all previous
indorsements;

(c) Is precluded from denying to his imme-
diate or a subsequent indorsee that the bill was,
at the time of his indorsement, a valid and sub-
sisting bill, and that he had then a good title
thereto.

See sections 54 and 59.

1. If the drawer of a bill puts it in circulation, bearing a forged
indorsement of the name of the payee, and the drawee accepts and
pays to a *bonâ fide* holder for value, he cannot recover back the
money paid; his acceptance is conclusive acknowledgment that he
has funds of the drawer, and against him he can charge the amount
of the bill, because the drawer is estopped to deny the verity of the
indorsement. *Hortsmann v. Henshaw*, 11 How. 177. See notes.

2. By indorsing a bill, the indorser admits the genuineness of the
signature of all prior parties and also their competence to sign. *East-
wood v. Westley*, 6 O. S. 55; *Ross v. Dixie*, U. C., 7 Q. B. 414;
Griffin v. Latimer, U. C., 13 Q. B. 187; *Hanscome v. Cotton*, U. C.,
16 Q. B. 98; *The Merchants Bank v. The N. E. Club*, U. C., 44 Q. B.
468; *McLeod v. Curran*, 1 Han. 592.

This section and the previous one need no explanation except ^{Estoppels}
with regard to estoppels. Under section 54, the acceptor is ^{binding}
precluded from denying to a holder in due course the existence of ^{acceptor.}
the drawer, the genuineness of his signature, and his capacity and
authority to draw the bill, but he is not bound to know the body
of the instrument. *National Bank of Commerce v. Nat. Mch.*
Bkg. As., An. 55 N. Y. 211; *City Bank v. First Nat. Bank*, 45
Tex. 203; *White v. Continental Nat. Bank*, 64 N. Y. 316.

If payable to the drawer's order, the acceptance admits only
the then capacity of the drawer to indorse. Therefore the
acceptor is not precluded from denying to a holder in due course
the genuineness or validity of the indorsement, and also the
authority of the drawer to indorse, for authority is not syno-
nymous with capacity, and authority to draw a bill does not neces-

§ 55. sarily include authority to indorse. *Robinson v. Yarrow*, 7 Taunt. 455; *Prescott v. Flinn*, 9 Bing. 19.

Where the bill is payable to the order of a third person, the acceptance admits the existence of the payee and his then capacity to indorse, but not his authority to do so, nor the genuineness or validity of his indorsement.

The Act does not specially define the estoppels binding the acceptor when the bill is payable to bearer or to a fictitious person, but it is presumed that they are to be determined by section 54, sub. (1). Where a bill is made payable to a fictitious person or to bearer, it would seem that the acceptor is responsible to a holder in due course, whether the bill be forged or not, stolen or not; but he will not be liable for any alteration in the body of the instrument. *National Bank of Commerce v. National Mech. Bkg. As.*, 55 N. Y. 211; *Smith v. Sheppard*, cited in *Chitty on Bills*, 10th ed., p. 180; *Robarts v. Tucker*, 16 Q. B. 576; *Ferrie v. House of Industry*, 1 R. de L. 27; *National Park Bank v. Ninth Nat. Bank*, 46 N. Y. 77; *Bank of St. Albans v. Farmers' Bank*, 10 Vt. 141; *Rej. 2 Nivose*, An. 12, D. 4, 1, 326; *Rej. 10 Nov.*, 1829, D. 29, 1, 384. "The instruments in question," said Lord Cotton, L. J., in the case of *Vagliano v. The Bank of England*, "were not therefore payable to bearer, and the bank, having paid upon forged indorsements, **must**, in the absence of any other ground of defence, take the consequences." 23 Q. B. D. 243. See notes under section 30.

Section 54 seems to settle in favor of the acceptor the conflict which divided the Court of Appeals of Ontario in the case of *Ryan v. The Bank of Montreal*, for under sub-section (2) if a bill be payable to drawer's order, the acceptor is not precluded from denying the authority of the drawer to endorse, nor the genuineness or validity of his indorsement.

Section 54, sub. (1), also declares that the acceptor of a bill engages that he will pay it according to the tenor of his acceptance, whether he has funds in his hands or not. But what will be the responsibility of the drawee who has accepted *à découvert*, *v. g.*, without funds, by the fraud of the holder who has not disclosed to him at the time of his acceptance facts concerning the drawer, which, if known, would certainly have prevented his acceptance, for instance, the coming insolvency of the drawer? Of course

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§ 55.

he will be liable to a holder in due course; but will he be responsible to the immediate holder by whom the fraud was practiced? Pothier, n. 118, does not hesitate in answering that he will not. "Néanmoins, si celui sur qui la lettre de change est tirée, et à qui les fonds n'ont pas été remis pour l'acquitter, avait été engagé à l'accepter par le dol du porteur ou du propriétaire de la lettre, il serait restituable contre son acceptation et son engagement. C'est un dol de la part du porteur de la lettre, lorsque ayant connaissance de la prochaine faillite du tireur, il dissimule cette connaissance à celui sur qui la lettre est tirée pour qu'il l'accepte."

Loaré and Persil are of opinion that the holder is not to be blamed for having thus looked to his own interest in preference to that of the drawee. Nouguié holds the contrary view. Alauzet and Bédarride make a distinction: if the holder is only guilty of suppression of facts, he must recover; if he has made false representations, he should not. The point has not received judicial determination in France, but in England the doctrine of Pothier and Nouguié has been sanctioned. *Martin v. Morgan*, 1 Ross Lead. Cas. 457; *Kendall v. Wood*, L. R., 6 Ex. 243. In *Martin v. Morgan* the question was whether the drawees who had paid a cheque without funds, in ignorance of the insolvency of the drawers known to the bearer, could recover the amount back from the latter. Chief Justice Dallas said: "It is a well known rule of law that where a party pays money to another, voluntarily, with full knowledge, or even full means of knowledge, of all the circumstances of the case, the party so paying cannot recover it back; but if such payment be made without such knowledge, or such means of knowledge, or the party obtaining payment *has suppressed certain facts, or made fraudulent representations*, the party paying shall recover back." *Bilbie v. Lumley*, 2 East. 469; *First National Bank v. Ricker*, 71 Ill. 439; 1 Ross, n. 663, p. 457; see also *De La Serra*, c. 10, n. 4; *Rousseau de Lacombe*, Vo. Let. de Chan., n. 5, p. 407; *Rogue*, t. 2, c. 65, n. 26, p. 360; *Chalmers*, p. 195; 1 Nouguié, nn. 304, 362; 1 Bédarride, n. 203; 4 Alauzet, 123.

With regard to estoppels binding the drawer, section 55, sub. Estoppels (b), declares that he is precluded from denying to a holder in binding drawer and due course the existence of the payee and his then capacity to indorse.

§ 55.

endorse. Therefore the drawer may deny the authority of the payee to indorse, and the genuineness or validity of his indorsement or the genuineness of the body of the instrument. The decision in *Hortsmann v. Henshaw*, which holds that the drawer is estopped from denying the verity of the indorsement, is consequently no longer law under the Act.

With regard to estoppels binding the indorser, he is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements. He is also precluded from denying to his immediate or a subsequent indorsee that the bill was, at the time of his indorsement, a valid and subsisting bill, and that he had then a good title thereto.

Liability of
indorser.

Finally, the indorser engages that, on due presentment, the bill should be accepted and paid according to its tenor, at the time of the indorsement; and if not paid, that he will pay the same as provided for in sub section *a* of section 55.

Where two or more indorsers or other persons become parties to a bill merely to accommodate some third party, and as his sureties, and one of them pays the bill, their rights and liabilities between themselves are those of sureties, and must be determined irrespective of the position of their names on the instrument. *Batchelor v. Lawrence*, 9 C. B. N. S. 543; *Small v. Riddell*, U. C., 31 C. P. 373; *Macdonald v. Whitfield*, 27 L. C. J. 165; P. C., 8 App. Cas. 733; *Reynolds v. Wheeler*, 30 L. J. C. P. 350; *Mitchell v. English*, 17 Ch. 303. See section 38. *Batson v. King*, 4 H. & N. 741; *Durac v. Ferrari*, 25 La. An. 80; *Ca. 26 Viet*, c. 45; C. C. arts. 1118, 1955. But the relationship of co-sureties must be understood by the parties either by agreement or by inference from facts and circumstances. *Fisker v. Meehan*, C. C., 40 Q. B. 146; *Macdonald v. Whitfield*, 5 App. Cas. 733.

In Quebec, an indorser or other party cannot demand payment from the principal debtor before paying the bill. *Maynard v. Renaud*, 12 L. C. J. 293; but he may demand from the latter to be indemnified even before paying, in the following cases: 1, when he is sued for the payment; 2, when the debtor becomes bankrupt or insolvent; 3, when the debtor has obliged himself to effect his discharge within a certain time; and 4, when the deb

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becomes payable by the expiration of the stipulated term, without regard to the delay given by the creditor. *Perry v. Milne*, 5 L. C. J. 121; *Desbarats v. Hamilton*, 2 L. N. 279; *McKinnon v. Kéroack*, Ca. 15 S. C. Rep. 125. C. C. art. 1953. See notes under section 38, p. 123.

In Ontario, accommodation indorsers may, after the note on which they are liable has matured, file a bill against the holder and maker to enforce payment by the latter. *Cunningham v. Lyster*, 13 Chy. 575.

56. Where a person signs a bill otherwise than as a drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course, and is subject to all the provisions of this Act respecting indorsers.

Stranger signing bill, liable as indorser.

1. A third party, who, after delivery, places his name on the back of a bill payable to bearer, is an indorser. *Booth v. Barclay*, U. C., 6 Q. B. 215; *Scott v. Douglass*, 5 O. S. 207; *Ramsdell v. Telfer*, U. C., 5 Q. B. 508; *Fairclough v. Pavia*, 9 Ex. 695.

2. In Quebec, a third party who, before acceptance and delivery, puts his name on the back of a bill or note payable to bearer, is an *aval* for the drawer or maker. *Merritt v. Lynch*, 9 L. C. R., 353; *Pariseau v. Ouellette*, M. L. R. 69; *Pratt v. MacDougall*, 12 L. C. J. 243. Contra in Ontario, where he is an indorser. *Vaudusen v. Vanlusen*, U. C., 7 Q. B. 176. *Supra*, n. 1.

3. Where one, not maker or payee, puts his name at the foot or on the back of a note payable to order before it is delivered to the payee, he is liable in Quebec as a guarantor or *aval* for the maker. *Patterson v. Pain*, 1 L. C. R. 219; *Narbonne v. Tétreau*, 9 L. C. J. 80; *Latour v. Gauthier*, 2 L. C. J., 12 L. C. J. 250.

4. The same rule prevails in Louisiana. *Gilbert v. Cooper*, 4 Rob. 161; *McGuire v. Bosworth*, 1 An. 248; *Penny v. Parham*, *ibid.* 274; *Cooly v. Lawrence*, 2 Martin, 301; *Guidrey v. Vives*, 7 id. 791; *Smith v. Gordon*, 10 Louis. 374; *Lawrence v. Oakey*, 14 id. 386; *Drew v. Robertson*, 2 An. 592; *McCaustan v. Lyons*, 4 id. 273; *Collins v. Trist*, 20 An. 348.

5. Quebec and Louisiana have borrowed their rule of law in this respect from France. *Rogue*, 2 Jur. Cons. 354; 1 Nougner, n. 510; *Savary*, 1 Parf. Neg. 261; *Massé*, Dr. Com. 526; *Colmar*, 22nd Nov., 1811; *Grenoble*, 2nd Feb., 1816; *Brussels*, 13th Nov., 1830; *Rej.* 30th March, 1819; *Cass.* 25th Jan., 1814; *Cass.* 4th March and 31st Dec., 1851; cited in 1 Bédarride, 545, 547; 2 Pardessus, 38.

6. In England and her colonies and in the United States, it has been held in numerous cases that if a person, not a party to a bill or note, thus places his name on it, at the time it was made and before its delivery to the payee, he is liable either as a maker, a new drawer or a guarantor. *Penny v. Innes*, 1 C. M. & R. 439; *Mathews v. Blox-*

§ 56.

ome, 10 Jur. N. S., 999; 33 L. J. Q. B. 209; *Peers v. Hall*, N. B., 2 P. & B. 34; *Bell v. Moffatt*, N. B., 4 P. & B. 121; *Hunt v. Adams*, 3 Mass. 180; *Semple v. Turner*, 65 id. 696; *National Pemberton Bank v. Longee*, 108 Mass. 371; *Strong v. Riker*, 16 Vt. 554; *Clapp v. Rice*, 13 Gray 403; *Carpenter v. McLaughlin*, 12 R. I. 270; *Haines v. Dubois*, 1 Vroom, 259; *Jones v. Goodwin*, 2 Am. R. 475; 1 *Randolph*, 68.

7. In other cases, and especially a recent one decided by the House of Lords in 1880, where the soundness of the doctrine in *Mathews v. Bloxome* was questioned, such a third party was held liable only as an indorser. *Steele v. McKinlay*, 5 App. Cas. 754; see also *Burmester v. Hogarth*, 11 M. & W. 97; *Smith v. Marsack*, 6 C. B. 486; *Morris v. Walker*, 15 Q. B. 589; *McLean v. Garnier*, 2 R. & G. 432.

8. In other cases, it has been held that he was not liable either as a maker, guarantor or indorser, and in fact that he was not liable in any shape or form. *Steer v. McMurray*, 6 O. S. 60; *McMurray v. Talbot*, U. C., 5 C. P. 157; *West v. Bown*, U. C., 3 Q. B. 290; *Skilbeck v. Porter*, U. C., 14 Q. B. 430; *Moffatt v. Rees*, U. C., 15 Q. B. 522; *Wilcox v. Tinning*, U. C., 7 Q. B. 372; *Smith v. Hill*, N. B., 1 A. 213; *McArthur v. McMillan*, 3 Ma. R. 152; *Plimley v. Westley*, 2 Bing. N. C. 249; *Morton v. Campbell*, *Cochran* 5; *Burns v. Snow*, 3 N. S. D. 530; *Gwynnell v. Herbert*, 5 A. & E. 436; *Ryan v. McKerral*, 15 O. R. 460. But the latter decision seems to have turned upon a question of consideration.

Of aval on the bill.—

Aval.

In the Province of Quebec, at least since the Code, the operation known as *l'aval* or guaranty of bills was well defined. Article 2311 of the Civil Code says: "A third person, who becomes warrantor on a bill of exchange, is liable in the same manner and to the same extent as the person in whose behalf he so becomes warrantor.

"He is bound by the diligence which binds his principal, and is not entitled to any notice of protest apart from the latter."

The latter part of the article introduced a new rule which was borrowed from the French code, for under the old law notice of dishonor was necessary.

It must be confessed that the confused state of the English jurisprudence was far from being satisfactory, a fact which a learned judge of Nova Scotia has recently recognized in no uncertain words:—"I am constrained to hold," says Mr. Justice James, after quoting Chalmers, in *McLean v. Garnier*, decided in 1881, "that the law remains in this Dominion, at least, in the same unsatisfactory position indicated by the two decisions of our own Court, to which I have alluded (*Morton v. Campbell*

and Burns v. Snow). A law must be very unsatisfactory which continually fails to carry out the dictates of common sense, and which permits parties to escape obligations into which they have deliberately entered. In this case, there can be no question that the defendant, for a valuable consideration, intended to bind himself as much as if his name was at the foot of the note. This is only one of a multitude of cases of a similar character occurring constantly, as is shown by the reports in England and her colonies and in the United States. The general result of the numerous cases in the United States seems to be that it is a question for the jury whether the defendant intended to bind himself as a surety or guarantor."

Donneur d'aval is an indorser.—

Mr. Chalmers, in the passage alluded to by Mr. Justice James, at page 177, says that the *donneur d'aval* or the stranger who thus becomes party to a bill "is not an indorser but a quasi indorser." Section 56 of the English Act has adopted the language laid down in Steele v. McKinlay, and declared that to all intents and purposes he is an indorser; and the Canadian Act, section 56, has not only reproduced the English Act, but, upon the suggestion of the Senate, has re-enacted so to speak article 32 of the French ordinance of 1673, and declared that, as such indorser, he is subject to all the provisions respecting indorsers, and is therefore entitled to presentment for payment and notice of dishonor, and in Quebec to protest and notice of protest.

Thus has been solved what appeared to be a legal puzzle, not only to bankers and mercantile men, but also to many judges. The solution may not be in strict conformity with the principles of law on the subject of indorsement or *aval* and suretyship, as they are understood at least in Quebec. But it must be confessed that its simplicity has a decided practical advantage. In Quebec, the *aval*, although familiar to the judges, was often misunderstood by business men, a fact which was clearly established in the case of Pratt v. Macdougall, and in the Provinces governed by the English law, the transaction will no longer be open to doubt and even miscarriage of justice. Everywhere in the Dominion, a person who signs otherwise than as a drawer or acceptor incurs the liabilities of an indorser to a holder in due course, and is subject to all the provisions respecting indorsers.

§ 56

Aval an indorser.

§ 56.

The *donneur d'aval* or guarantor being only responsible as indorser, his indorsement creates no obligation in favor of prior parties to the bill, and is solely for the benefit of those who take it subsequently, as laid down in *Steele v. McKinlay* and other cases cited by Lord Blackburn, at page 772. Therefore, if a third party, before delivery, indorse a bill payable to the order of the drawer, as in the case of *Steele v. McKinlay*, he will be held liable not to the drawer, but only to the parties subsequent to the latter. To hold him liable as the guarantor of the acceptor would require another operation entirely extrinsic of the bill.

The *avals* or guarantors, being indorsers, will be responsible like ordinary indorsers to third parties interested in the bill; but proof, when it is admissible, may be adduced to show, that between themselves it was intended even to invert the position and liabilities assigned to them by the bill. *Maedonald v. Whitfield*, 17 App. Cas. 733.

Aval for
acceptor or
maker.

Section 56 declares that if a person *sign* a bill otherwise than as a drawer or acceptor, he will thereby incur the liabilities of an indorser to a holder in due course. But will a third party to a bill, who merely signs his name immediately below that of the acceptor, be held responsible as an indorser? By the law merchant of England which has been reproduced in the Act,⁽¹⁾ a bill must be accepted by the drawee, or failing him, by some one for the honor of the drawer or indorser, and no one else can become a party *quâ* acceptor except under these circumstances. It would seem, therefore, that under the English law and the Act, a third party who thus signs his name immediately below that of the acceptor cannot be held liable as an acceptor. To hold him liable as a guarantor of the acceptor, it would be necessary to have some writing to that effect signed by himself for a separate consideration, a proposition which is fully recognized in *Steele v. McKinlay*.

But under section 56, can he be held liable as an indorser to a holder in due course? Probably he may be, he being neither an acceptor nor a drawer, and the Act making no distinction as to the other parties who sign the bills. The signature may be attached anywhere on the bill.

But will the guarantor or *aval*, who signs his name immediately

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below that of the drawer of a bill or the maker of a note, be § 56.
treated as an indorser or as a drawer or maker? Lord Watson said in *Steele v. McKinlay*, that there is obviously no principle of the law merchant which can prevent any number of persons becoming bound as promisor along with the original grantor of the note. The Act has embodied this doctrine in express terms in section 84, which declares that where a note runs "I promise to pay," and is signed by two or more persons, it is deemed to be their joint and several note. *Creighton v. Fretz*, U. C., 26 Q. B. 627. It would seem clear thereby that the guarantor who merely signs his name at the foot of a note can be charged as a maker.

But will the rule be the same with regard to a bill of exchange? The Act has no similar provision with regard to this instrument, and likely the maxim *expressio unius exclusio alterius* would apply. Moreover, section 3 defines a bill of exchange an order, "addressed by one person to another, signed by the person giving it."

Can it be argued that the guarantor who merely signs his name below that of the drawer, after or even before the issue and delivery of the bill, is the person who *addresses, signs and gives* the order? Probably, therefore, the guarantor of the drawer does not occupy the position of a drawer, and must be treated as an indorser. Aval for drawer.

In the Province of Quebec, where the *aval* is fully recognized by the common law, can a third party, who signs on behalf of the acceptor or drawer, be treated as a guarantor or *donneur d'aval*, and as such entitled to no other diligence but that required against his principal, especially if he adds some words indicating that he is only a guarantor, *v. g.*, *Bon pour aval*.

It seems at least doubtful whether the common law of Quebec has not been altogether repealed by the Act, with regard to the *donneur d'aval*. Section 56 has created him an indorser, and would be prudent to treat him as such, and give him notice of protest even when he appears to have signed for the drawer or the acceptor.

To avoid misunderstanding and surprises, therefore, it would be advisable that in all cases throughout the whole Dominion, every signature on a bill other than that of the drawer or acceptor should

§ 55. strictly be regarded as that of an indorser entitled to notice of dishonor and in Quebec to protest and notice of protest, unless the latter are waived by him, by writing over his signature, in Quebec such words as "diligence waived" or "protest waived," or "without protest," and in the other provinces, "without presentment" or diligence waived."

In all cases where a bill is indorsed by an *aval*, the holder should be careful to indorse it by putting his name after that of the *aval*.

Section 56 applies only to a holder in due course. The law is not changed as between the immediate parties. As to what is a holder in due course, see sections 29 and 30.

Of guarantee of bills upon the instrument.—

Guarantee of
bills.

By a collateral and independent agreement, written and signed in accordance with the Statute of Frauds, which is in force in all the provinces, a third party may guarantee the payment of a bill, either in favor of one or of all the parties who may become holders. *Steele v. McKinlay*, 5 App. Cas. 75; *Macdonald v. Whitfield*, 8 ibid. 733. This guaranty may be given upon a copy of the bill as well as upon the original bill or a part of the set, if drawn in a set; it may also be written on an *allonge*, which under section 32 of the Act, is deemed to be on the bill. *McLaren v. Watson*, Ex'rs., 26 Wend. 430; *Fell on Guarantees*, 2nd Am. ed. 1859, p. 317; *Story on notes*, p. 317; *Savary*, vol. 2, Parère 14, p. 94; Parère 37, p. 259; *Pothier, Contrat de Change*, n. 50, p. 144; *Guyot*, vo. *Aval*; 1 *Nouguier*, 313; *Persil*, 224; *Loché*, art. 142.

In Ontario and the other provinces governed by the English law, some consideration for the guaranty, given after delivery of the instrument, must be expressed. *Palmer v. Baker*, U. C., 23 C. P. 302; *Walker v. O'Reilly*, U. C., 7 L. J. 300; *Good v. Martin*, 5 Otto, 90; *Leonard v. Vredenburg*, 8 Johns. 29; *Hall v. Farmer*, 5 Denio 484; *Benthall v. Judkins*, 13 Met. 265; *Crossman v. May*, 68 Ind. 242; *Williams v. Williams*, 67 Mo. 661; *Beebe v. Moore*, 3 McLean 387; *Green v. Thorton*, 4 ib. 230; *Joslyn v. Collinson*, 26 Ill. 61; *Howard v. Jones*, 10 Mo. App. 81.

It has generally been held in England and United States that a guarantee is a waiver of demand of payment and notice. *McLaren*

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EX'RS. *v.* Watson, 26 Wend. 425; Foote *v.* Brown, 2 McLean, § 56.
369; True *v.* Harding, 12 Me. 193; Hitchcock *v.* Humphrey,
6 Scott N. R. 540; Walton *v.* Maxall, 13 M. & W. 72, 452;
Taylor *v.* Ross, 3 Yerg. 330; Greene *v.* Thompson, 33 Iowa
293; Brown *v.* Curtiss, 2 N. Y. 225; Allen *v.* Rightneere, 20
Johns. 365; Murray *v.* King, 5 B. & Ald. 165; 2 Randolph,
§ 880, 886; 3 id. 1208-1210. Several precedents can however
be cited where a different rule was laid down, as, for instance, in
Goldie *v.* Maxwell, U. C., 1 Q. B. 425. It is prudent, if not
absolutely necessary, under section 56, to treat a guarantor upon
a bill as an indorser, and to give him a regular notice of dishonor.

A guarantee given upon the face of the bill, or a copy thereof,
or upon an *allonge*, inures to the benefit of all subsequent par-
ties taking the bill, and passes with the latter. It is negotiable
together with the bill. 2 Randolph, 860.

Of guarantee of bills upon a separate paper.—

But is a guarantee written on a separate paper equally nego-
tiable? In the case of McLaren *v.* Watson Ex'rs 26 Wend.
428, Chancellor Walworth said: "To make a guarantee nego-
tiable as a part of the note to which it relates, it must be on the
note itself, or at least it must be annexed to it, in the nature of an
allonge, or eking out of the paper upon which the note is
written."

The president of the Court (Bradish) said: "A separate
guarantee of such paper has been considered only as a special
contract, not negotiable, and of course available in his own name
only by the party to whom it was originally given. Our courts
have recognized as good endorsements on negotiable paper in the
form of a guarantee and in terms negotiable being to order or
bearer, but on the ground that these were, in effect, new bills, and,
therefore, valid as such, and not merely as guarantees of the origi-
nal paper so endorsed. This was the recent case of Ketchell *v.*
Burns, 24 Wend. 456, and of other previous cases."

This decision was pronounced in 1841, by the Court for the Cor-
rection of Errors of the State of New York, composed of fifteen
members, twelve of whom favored the above doctrine, while
three dissented. This case has been considered and is still the
leading American case, although not universally adhered to. 1 Ran-
dolph, § 176; 2 id., § 860, 861. The rule it lays down is

§ 56. favored as the correct one in 2 Daniel, 787, Story on Bills, § 458, Story on Prom. notes, § 484, and opposed on authority in 2 Parsons, 133, 134, and 1 Edwards, § 314.

Mr. Justice Story thus sums up the American jurisprudence on this point: "In case of separate instrument of guaranty, at least where it is not expressly stated that the guarantee shall be negotiable..... it seems clear that the guaranty is to be limited to the very person to whom it is given, or with whom it is just contracted. The same doctrine has been applied where the guaranty contains the name of no person on it, to or with whom it is made, for then it will be construed to be limited to the first person who takes the note and advances money on the faith of the guaranty, and it will not be deemed to be negotiable." Story on notes, § 484, 633; see also Fell on Guaranties, 2nd Am. ed. 1859, p. 317.

It would seem under the ruling of *Steele v. McKinlay*, 5 App. Cas. 75, that the law is the same in England.

In France and throughout Europe, a different principle has been adopted. Article 142 of the Code de Commerce says: "Cette garantie est fournie par un tiers, sur la lettre même ou par acte séparé." But this was not permitted before the promulgation of the modern codes. The ordinance of 1673 has thus laid down the old law of France, which is also the common law of the Province of Quebec. Article 33 says: All who have put their *aval* upon bills of exchange, "*sur des lettres de change*," shall be liable jointly and severally, etc., etc. See Paris, 15th March, 1872, D. 73, 2, 24; Cass. 18th May, 1813, D. 13 1, 324; Cass. 21th June, 1816, D. 16, 1, 324; Cass. 26th June, 1818, D. 18, 1, 264; Rej. 30th March, 1819, D. 19, 1, 358; 1 Bédaride, 543; Req. 22nd Febry., 1869, D. 69, 1, 515; Cass. 21st April, 1869, D. 69, 1, 407; Dunkerque, 17th November, 1874; Douai, Journ. de Marseille, 1875, 2, 7.

A guarantee on a separate paper is no portion of the bill, and is an agreement altogether outside of the same, and therefore not negotiable, though made payable to order or to bearer, unless perhaps in Quebec it would come within the meaning of article 1573 of the Civil Code: "Notes for the delivery of grain or other things, or *for the payment of money*, and payable to order or to bearer, may be transferred by endorse

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absolutely or subject to a condition." See 2 Randolph, §§ 560
861; Lamoureux v. Roy, 13 R. L. 680.

When the guarantee is on a separate paper, presentment for payment, protest or notice of protest, are not necessary. A special consideration is also required by the law of all the provinces, except Quebec. The guarantor is an *cofary caution* or surety. 2 Randolph, §§ 856, 880, 886; 2 id. 1 1208-1210. Steele v. McKinlay, 5 App. Cas. 754; Quebec Civil Code, art. 1929.

57. Where a bill is dishonored, the measure of Measure of damages against parties to dishonored bill. damages which shall be deemed to be liquidated damages, shall be as follows:—

(a) The holder may recover from any party liable on the bill, the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser—

(1) The amount of the bill;

(2) Interest thereon from the time of presentment for payment, if the bill is payable on demand, and from the maturity of the bill in any other case; ⁽¹⁾

(3) The expenses of noting and protest;

(b) In the case of a bill which has been dishonored abroad, in addition to the above damages, the holder may recover from the drawer of any indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-

(1) Cléroutx v. Pigeon, 33 L. C. J. 236.

§ 57. exchange with interest thereon until the time of payment.⁽¹⁾

See also sections 9 (d) and 71 (d).

Interest thereon from the maturity of the bill.—

1. Therefore, the rule recently laid down by the Court of Appeals of Ontario, *In re McDougall*, 12 A. R. 265, that an indorser who had waived protest, was not responsible for interest, the note not having been protested, is changed by the above section.

2. Interest made payable by a note is part of the debt. *Crouse v. Park*, U. C., 3 Q. B. 458; *Contra Dalley v. Humphrey*, U. C., 37 Q. B. 514; *St John v. Rykert*, 4 A. R. 213. Section 57 has adopted the ruling of the first case, and has intentionally omitted sub-section (3) of section 57 of the English Act, which practically leaves the question of interest to the discretion of the court.

3. Interest is recoverable on a note at the rate specified in it, however exorbitant it may be. *Howland v. Jennings*, U. C., 11 C. P. 272; *Young v. Fluke*, U. C., 15 C. P. 360; *O'Connor v. Clark*, 18 Chy. 422. See notes.

4. A note discounted by a bank at a larger rate of interest than allowed by law, may, nevertheless, be recovered on by them. *Commercial Bank v. Harris*, U. C., 26 Q. B. 594; *Bank of Montreal v. Scott*, U. C., 17 C. P. 358; *Ca. 29 and 30 Vict. c. 10, s. 5*; 34 *Vict. c. 5, s. 52*. See notes.

5. Corporations other than banks and loan societies, governed by special enactments, may charge the same rate of interest as private individuals. *Corporation N. Gwillimbury v. Moore*, U. C., 15 C. P. 445. See notes.

6. The *Con. Stats.* U. C., chap. 42, gives damages on the usual protest for *non-payment* of bills of exchange, but damages cannot be claimed under the statute, by reason of the *non-acceptance* of such bills. *Bank of Montreal v. Harrison*, U. C., 4 C. P. 331.

7. A promise to pay with interest means interest from the date of the note. *Baxter v. Robinson*, 2 R. de L. 439.

8. But a promise to pay "£200 with six months interest" means only six months interest before service of process. *Heaviside v. Munn*, 2 R. de L. 439.

9. In default cases, interest runs on notes payable on demand from date. *De Chantal v. Pominville*, 6 L. C. J. 88. Otherwise by section 57. See also sections 10 and 45.

The expenses of noting and protest.—

10. The costs of notice of protest to the *arals* and to *bearer* cannot be allowed, as unnecessary. *The Union Bank v. Gibeault*, 12 Q. L. R. 145. Otherwise by section 56 as to *arals*.

11. The indorser sued together with the drawer, but who has pleaded separately, though by the same attorney, is not responsible for the costs, *faux frais*, of the drawer, unless these *faux frais* are denounced to the indorser. *Boucher v. Latour*, 6 L. C. J. 269.

In the case of a bill which has been dishonored abroad, etc.

12. The drawer is liable for the damages provided by the laws of

(1) *Greatorex v. Score*, U. C., 6 L. J. 212.

the country in which it is drawn. *Astor v. Benn*, 2 R. de L. 27. Otherwise by the above section of the Act. See section 71.

13. Interest allowed by our law is chargeable upon a note dated and made payable in the United States. *Griffin v. Judson*, U. C., 12 C. P. 430. See section 71.

14. The holder of a foreign bill of exchange drawn upon some one in England, is entitled upon the bill being protested to recover from the acceptor only damages in the nature of re-exchange, and not interest as allowed by the laws of the country where the bill was drawn or purchased. *Ex parte Robarts*, 18 Q. B. D. 286; 56 L. J. Q. B. 74; *Commercial Banking Company of Sydney v. Commercial Bank of South Australia*, 36 Ch. D. 522; 5 L. T. 395; *Boyce v. Edwards*, 4 Peters, 111. See also section 71.

15. Action on sterling bill drawn by plaintiffs in London, upon defendants in Upper Canada, accepted by defendants in London, (one of them being at the time in London), payable in London:—Held, that plaintiffs were entitled to recover the current rate of exchange. *Greatorex v. Score*, U. C., 6 L. J. 212. See also *Mellish v. Siméon*, 1 Ross, Lead. Cas. 493.

16. The re-exchange must be calculated at the rate on the day of maturity, without reference to the rate of exchange at the time of the trial, or at any other time. *Judson v. Griffin*, U. C., 13 C. P. 350; *White v. Baker*, U. C., 15 C. P. 292; *Hirchfeld v. Smith*, L. R. C. P. 353. The principle has been recognized in section 71, subsection (b). See also section 9 (b). See also 2 Pardessus, 323 to 329.

Under the Continental Codes, re-exchange arises only on dishonor by non-payment; but under the English law and section 57 of the Act, it is due on dishonor by non-acceptance as well as on dishonor by non-payment. *Suse v. Pompe*, 8 C. B. N. S. 566; and consequently the Ontario decision in the *Bank of Montreal v. Harrison* cannot be considered to apply any longer, if it ever correctly expressed the law.

Formerly, it was also thought that an acceptor was not liable for re-exchange. *Napier v. Schneider*, 12 East. 420; *Woolsey v. Crawford*, 2 Comp. 445. But under more recent decisions, the contrary doctrine has prevailed in England. *Ex parte Robarts*, 16 Q. B. D. 702, 18 Q. B. D. 286; re *General South American Company*, 7 Ch. D. 637. In the United States likewise, the acceptor of a bill is not in general liable for re-exchange, 3 Randolph, § 1714. Under section 57, subsection (b), the acceptor is not liable for re-exchange to the holder, but he is to the drawer or an indorser, who has been compelled by the holder to pay the bill with re-exchange and interest, for under the same section the holder is entitled to re-exchange and interest from the drawer and any indorser. See *ante*, p.p. 14, 15, 16, 23, 24.

§ 57.

The operation of "re-exchange" is thus explained by Chancellor Kent, in his "Commentaries," vol. 3, p. 115.

"The engagement of the drawer and indorser of every bill is, that it shall be paid at the proper time and place; and, if it be not, the holder is entitled to indemnity for the loss arising from this breach of contract. The general law merchant of Europe authorizes the holder of a protested bill immediately to re-draw from the place where the bill was payable, on the drawer or indorser, in order to reimburse himself for the principal of the bill protested, the contingent expenses attending it, and the new exchange which he pays. His indemnity requires him to draw for such an amount as will make good the face of the bill, together with interest from the time it ought to have been paid, and the necessary charges of protest, postage, and broker's commission, and the current rate of exchange at the place where the bill was to be demanded or payable, on the place where it was drawn or negotiated. The law does not insist upon an actual re-drawing, but it enables the holder to recover what would be the price of another new bill at the place where the bill was dishonored, or the loss on the re-exchange; and this it does by giving him the face of the protested bill, with interest and the necessary expenses, including the amount or price of the re-exchange."

But in section 57, sub-section (b), with regard to re-exchange to be applied to a promissory note which has been dishonored abroad. For instance, A., in Montreal, gives his note to B., payable in Paris. Can the holder charge re-exchange? In the time of Pothier and Dupuy de la Serra, such a note was called a *billet de change*, and looked upon as equivalent to a bill of exchange. Under the modern French code, this note is called *billet à domicile*, and is also held by the best authorities to be subject to the regulations applicable to bills of exchange, as far as practicable. See Bédarride, vol. 2, p. 422, where all the authorities are collected. Section 88 declares that the Act shall apply, with the necessary modifications, to promissory notes, with the exception of some provisions which are specified in sub-section (3), but which do not comprise those relating to measure of damages on foreign bills, and especially re-exchange. It would seem, therefore, under both the common law and the Act, that re-exchange can be charged upon a foreign dishonored note; and, as a rule, merchants do charge this re-exchange in drafts which are drawn to retire a note dishonored abroad.

Interest and
usury laws.

Usury laws have been abolished in Canada, except with regard to banks and loan companies, and even in respect of the latter the old penal clauses have been repealed. Rev. St. Can., c. 127, as amended in 1890 by 53 Vict., c. 34. Section 1st of the

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§ 57.

Revised Statute says, that unless specially prescribed by the said Act or any other Act of the Parliament of Canada, any person may charge any rate of interest or discount which may be agreed upon; and, if no rate be fixed by the parties, it shall be the legal rate of six per cent. per annum; sec. 2 Prior to the last session of Parliament, certain restrictions were imposed upon corporations in Quebec and Ontario, which were removed by the amendment Act, 53 Vict., c. 34; special regulations were also to be applied to Nova Scotia, New Brunswick, British Columbia and Prince Edward Island; but at the last session, they were all repealed, and except as to banks and loan companies upon real estate, which are regulated by special charters, the usury laws with regard to bills and notes are summed up in the above first and second sections of the Revised Statutes of Canada, c. 127. See *ante*, pp. 23, 24.

During the last session of the Parliament of Canada, a new Banking Act was passed called "The Bank Act," 53 Vict., c. 31, which comes into force on the 1st July, 1891.

Section 80 says:

"The bank shall not be liable to incur any penalty or forfeiture for usury, and may stipulate for, take, reserve or exact any rate of interest or discount not exceeding seven per cent. per annum, and may receive and take in advance any such rate, but no higher rate of interest shall be recoverable by the bank; and the bank may allow any rate of interest whatever upon money deposited with it."

Section 81. "No promissory note, bill of exchange or other negotiable security discounted by or indorsed, or otherwise assigned to the bank, shall be held to be void, usurious or tainted by usury, as regards such bank, or any maker, drawer, acceptor, indorser, or indorsee thereof, or other party thereto, or *bonâ fide* holder thereof, nor shall any party thereto be subject to any penalty or forfeiture by reason of any rate of interest taken, stipulated or received by such bank, on, or with respect to such promissory note, bill of exchange, or other negotiable security, or paid or allowed by any party thereto to another in compensation for, or in consideration of the rate of interest taken or to be taken thereon by such bank; but no party thereto, other than the bank, shall be entitled to recover or liable to pay more than the lawful rate of interest in the Province where the suit is brought, nor shall the bank be entitled to recover a higher rate than seven per cent. per annum; and no innocent holder of or party to any promissory note, bill of exchange or other negotiable security, shall in any case be deprived of any remedy against any party thereto, or liable to any penalty or forfeiture, by reason of any usury or offence against the laws of any such Province respecting interest, committed in respect of such note, bill or negotiable security, without the complicity or consent of such innocent holder or party."

§ 58.

Section 82 authorizes the banks to charge certain collection fees upon bills payable at any other of their own places of business, branches, or agencies. These fees, which must be charged at the time of discount, are to be calculated according to the time that the bill has to run, "that is to say, under thirty days, one-eighth of one per cent.; thirty days or over, but under sixty days, one-fourth of one per cent.; sixty days and over, but under ninety days, three-eighths of one per cent.; ninety days and over, one-half of one per cent."

Section 83 authorizes any bank, in discounting any bill *bona fide* payable at any place in Canada, not its own, different from that at which it is discounted, to charge, in addition to the discount, an agency fee not exceeding one-half of one per cent. on the amount of the bill.

Finally, section 103 enacts, that "the Bank shall not charge any discount or commission for cashing any official cheque of the Government of Canada, or of any department thereof, whether drawn on itself or on another bank." Of course this section does not extend to any official cheque of the Government of any of the provinces, or of any department thereof, which is to be treated like an ordinary cheque.

Transferror
by delivery.

58. Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a "transferror by delivery;"

Liability.

(2) A transferror by delivery is not liable on the instrument;

(3) A transferror by delivery who negotiates a bill thereby warrants to his immediate transferee, being a holder for value, that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

See section 23.

1. If a bill be given in respect of an antecedent debt, and dishonored, the transferror by delivery may be sued on the original debt. *Ward v. Evans*, 2 Ld. Rayn. 930; *Camidge v. Allenby*, 6 B. C. 382; *Mitchell v. Holland*, Ca. 16 S. C. R. 687. See page 201, n. 4.

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2. In such a case, the delivery was not intended to operate a full and final discharge of the liability of the transferor. *Van Wart v. Whooley*, 3 B. & C. 446.

§ 58.

3. But the transferee, in order to avail himself of the above exceptions, must use reasonable diligence in endeavoring to obtain payment and in giving notice of dishonor to the transferor. *Rogers v. Langford*, 1 Cr. & M. 642; *Moule v. Brown*, 4 Bing. N. C. 266; *Robson v. Oliver*, 10 Q. B. 704.

4. But D. changes a banker's note or cashes a cheque payable to bearer for the convenience of the holder. If the bank has stopped payment, or the cheque be dishonored, D. can recover the money. *Turner v. Stones*, 1 D. & L. 122; *Woodland v. Fear*, 26 L. J. Q. B. 202; *Timmins v. Gibbins*, 18 Q. B. 722.

The following is from Chalmers, p. 184 :—

5. C. discounts with D. a bill payable to bearer without indorsing it. It turns out that, unknown to C., the amount of the bill had been fraudulently altered by a previous holder. D. can recover from C. the money he paid. *Jones v. Ryde* (1814), 5 Taunt. 488; *Cf. Burchfield v. Moore* (1854), 23 L. J. Q. B. 261.

6. A bill broker discounts with a bank a bill indorsed in blank by the payee. The indorser absconds, and the signatures of the drawer and acceptor turn out to be forgeries. The bank can recover the money they paid from the bill broker. *Fuller v. Smith* (1824), R. & M. 49.

7. An agent gets a bank to discount a bill drawn and indorsed in blank by his principal, and then pays over the money to his principal. The signature of the acceptor was a forgery, but the agent did not know it. The drawer fails. The bank cannot recover from the agent. *Ex parte Bird* (1851), 4 De G. & S. 273.

8. The *bonâ fide* holder of a bill purporting to be drawn by A., accepted by B., and indorsed in blank by C., discounts it with a banker. It turns out that the signatures of A. and B. were forgeries, and that C., whose indorsement was genuine, is insolvent. The banker can recover from the holder the money he paid. *Gurney v. Womersley* (1854), 24 L. J. Q. B. 46; *Merriam v. Wolcott* (1861), 85 Massachus. R. 258.

9. When the transferee discovers the defect in the bill, he must repudiate the transaction with reasonable diligence. *Pooley v. Brown* (1862), 31 L. J. C. P. 134.

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§ 59.*Discharge of Bill.*

Discharge by
payment.

Payment in
due course.

Payment by
drawer or in-
dorser; its
effect.

Accommoda-
tion bill.

59. A bill is discharged by payment in due course by or on behalf of the drawee or acceptor:

“Payment in due course” means payment made at or after the maturity of the bill to the holder thereof in good faith, and without notice that his title to the bill is defective;

(2) Subject to the provisions hereinafter contained, when a bill is paid by the drawer or an indorser it is not discharged; but ⁽¹⁾

(a) Where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill;

(b) Where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill;

(3) Where an accommodation bill is paid in due course by the party accommodated, the bill is discharged.

See sections 28, 36, 54.

See notes.

PAYMENT.

1. Payment by a banker is complete when the money is laid on the counter. *Chambers v. Miller*, 32 L. J. C. P. 30.

(1) See section 37, n. 3.

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2. As to what constitutes payment between bankers, where there is a clearing house. See *infra*, n. 61, page 208. § 59.

3. The holder is not obliged to accept part payment; but if he does, the bill will be discharged *pro tanto*. *Grades v. Key*, C. B. & Ad. 313; *Cook v. Lister*, L. J., 32 C. P. 125.

4. Payment by cheque or bill is no payment, if dishonored. 19 R. L. 470; *Currie v. Misa*, L. R., 10 Ex. 163; *Cohen v. Hale*, 3 Q. B. D. 371, *Chalmers*, 208; *Corp. des Chutes de Kingsley v. Quesnel*, 19 R. L. 470; *Landry v. Beauchamp*, 13 L. N. 169. See s. 58, n. 1.

5. Payment must be made at or after maturity. *Burbridge v. Manners*, 2 Can. p. 194; *Beaumont v. Greathead*, 2 C. B. 494. Section 59, sub-sect. 1.

6. Payment by the acceptor before maturity operates as a mere purchase of the instrument, and he may again negotiate the same at any time, but not at or after maturity. *Morley v. Culverwell*, 7 M. & W. 174; *Attenborough v. MacKenzie*, 25 L. J. Ex. 244. See s. 36.

7. In Quebec, payment must be proved according to the laws of England, and parol evidence is sufficient. *Carden v. Finley*, 10 L. C. R. 255. Except to interrupt prescription. See *infra*.

8. Payment of a bill made in consequence of fraudulent representations or even suppression of material facts by holder is invalid, and the party paying may recover it back. *Martin v. Morgan*, 1 Ross Lead. Cas. 457; *Hewitt v. Waterman*, 3 La. An. 716; *Taylor v. Burke*, 4 id. 16; *Halde v. Richer*, 19 R. L. 60. See notes under section 55.

9. A cheque is presented and paid. Directly after the payment the bankers discover that the drawer's account was overdrawn. They cannot recover the money so paid from the holder of the cheque. *Chambers v. Miller*, 32 L. J. C. P. 30.

Payment by the drawee, acceptor or maker.—

10. In order to vitiate the payment made by the maker of a note indorsed in blank, bad faith on his part must be shewn. *Ferrie v. Wardens of the House of Industry*, 1 R. de L. 27; see also *Jack v. Jack*, 12 A. R. 476.

11. A bank having discounted a note for the indorser charges the same to the latter's account. The maker pays the note to indorser after maturity. Held, a valid payment, and that the bank had no recourse against the maker. *Cleveland v. The Exchange Bank*, 15 R. L. 51.

12. Two of four members of a syndicate paid a note relating to their joint enterprise, although they appeared differently on the face of the note. Held, that the payment discharged the bill. *Small v. Riddell*, U. C., 31 C. P. 373; see also *Macdonald v. Whitfield*, 8 App. Cas. 754.

13. If the payment by one bank of a cheque drawn on another bank may at first sight seem irregular, still, under the circumstances of this case, as the cheque had been paid in good faith, in ignorance of the endorsement to V. the trusted employee of the liquidators of the plaintiff bank, and for the purpose of redeeming its circulation, the payment made to V. discharged the defendant bank. *The Exchange Bank of Canada v. The Quebec Bank*, M. L. R., 6 S. C. 10.

14. Plaintiffs wrote to defendant, August 15th, demanding payment of an account admitted to be due. Defendant replied, forwarding a

§ 59.

promissory note for the amount, with interest and bank discount. Plaintiffs handed the reply, with the promissory note, to their attorneys, who wrote August 27th for a settlement, but did not return the note, which had not matured when plaintiffs brought action for the amount of the account.

Held, on appeal from the judgment of the Chief Justice, at Chambers, setting aside a plea founded upon the acceptance of the note, that there had been no acceptance of the note in payment of the account. *Brown et al. v. Harris*, 1 R. & G. 13.

15. Note given by E., payable to the plaintiff at the bank of defendants, who were bankers for both E. and the plaintiff. Note charged to E.'s account and credited to the plaintiff. *Held*, a payment, and irrevocable. *Nightingale v. City Bank of Montreal*, U. C., 26 C. P. 74.

16. In an action by the endorsee against the acceptor of a bill not appearing to have been accepted for the accommodation of the drawer, a plea of payment by the drawer is no defence, unless shown to have been made on the acceptor's account and adopted by him at the time of payment or subsequently. *Bank of Montreal v. Armour*, U. C., 9 C. P. 401; see also *Brussels*, 18th July, 1819; 2 *Bédarride*, 447 to 450.

17. A note payable on demand was endorsed to the plaintiff as security for a liability he had incurred for the payee; the maker afterwards paid the amount of the note to the payee. *Held*, that the note not having been absolutely transferred to the plaintiff he stood in the same position as the payee, and could not recover. *Estabrooke v. McKenzie*, Hil. T. 1827; N. B. *Stev. Dig.* See sections 29 and 30.

18. A payment made by the maker to the original holder after transfer would be at his own risk, though the note was overdue at the time of the transfer. *Ferguson v. Stewart*, U. C., 2 L. J. 116.

19. The acceptor of a bill settles with the drawer before the bill matures. It turns out that the bill was outstanding in the hands of a third party. The acceptor must pay the holder, but can recover the amount from the drawer as money paid to his use. *Hawley v. Beverley*, 6 M. & Gr. 221.

20. Possession of a note by the maker after maturity is only a presumption of payment which can be rebutted by parol evidence to the contrary. *Grenier v. Pothier*, 3 Q. L. R. 377.

20a. Payment by the principal debtor is not sufficient if the bill has not been surrendered to him. *Cass.* 12th June, 1820; *Cass.* 5th April, 1826, cited in *Dalloz*, Rép. nn. 566, 584. This is true only when the payment is not made to the holder.

21. A bill is accepted by three joint acceptors (not partners). One of them pays it at maturity. The bill is discharged and cannot be again negotiated. It is immaterial that the acceptor who paid accepted the bill for the accommodation of the other two. *Harner v. Steele*, 4 Exch. 13, 14; *Bartrum v. Caddy*, 9 A. & E. 275.

22. A bill accepted payable at a bank and indorsed in blank by C. is sent to D. to collect. D. improperly discounts it. To regain possession D. goes to the acceptor's bankers, pays in the amount of the bill, and asks to have the bill given up to him, when the holder has been paid. This is done. The bill is not discharged. C. can sue the acceptor. *Deacon v. Stodhart*, 2 M. & Gr. 317; *Thomas v. Fenton*, 5 D. & L. 28; *Walter v. James*, L. R., 6 Ex. 124.

23. C. is the holder of a dishonored bill indorsed in blank. D. pays the amount and costs to C. in order to get the bill and sue on

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it. C. parts with the bill under the impression that D. has paid it on behalf of the acceptor. The bill is not discharged. D. can sue the drawer. *Lyon v. Maxwell*, 18 L. T. N. S. 28. § 59.

24. A joint and several note is paid at maturity by one of the makers. The note is discharged. *Beaumont v. Greathead*, 2 C. B. 491.

25. A bill is indorsed payable to John Smith or order. Another person of the same name gets the bill and presents it. The acceptor pays him. The bill is not discharged. The acceptor is still liable to the real John Smith. *Graves v. American Bank*, 17 New York R. 265.

26. A bill indorsed in blank is stolen. The thief presents it to the acceptor at maturity, and obtains payment. If the acceptor pays him in good faith the bill is discharged, for the thief is the holder. *Smith v. Sheppard*, cited Chitty on Bills, 10th ed., p. 180.

27. The indorsee of a bill has obtained it by fraud. He presents it at maturity to the acceptor, who pays him in good faith. The bill is discharged. *Roberts v. Tucker*, 16 Q. B. 576.

Where bill is paid by the drawer or indorser.—

28. The acceptor of a draft not paid at maturity, and remaining with the bank which discounted it, does not cease to be responsible to the bank, notwithstanding the state of account between the drawer and the bank. Payment by the acceptor only can discharge the bill. *Goodhall v. The Exchange Bank*, M. L. R., 3 Q. B. 430.

29. Indorser paying is not entitled and does not need conventional subrogation against prior parties. *Bove v. Macdonald*, 16 L. C. R. 191.

30. Where a note is payable to and indorsed by several persons, the payment to or discharge by one is the payment to or discharge to all. *Bank of Michigan v. Gray*, U. C., 1 Q. B. 422. Saving recourse for contribution among them. *Macdonald v. Whitfield*, 8 App. Cas. 754.

31. The indorser of a bill writes to the drawer promising to "retire" it, and accordingly takes it up before maturity. The bill is not discharged. *Elsam v. Denny*, 15 C. B. 87.

32. The acceptor of a bill, originally payable to drawer's order, dishonors it. The drawer pays the holder and gets the bill. He may either sue the acceptor himself, or he may strike out his own and the subsequent indorsements, and again negotiate the bill away. *Calow v. Lawrence*, 3 M. S. 95; *Hubbard v. Jackson*, 4 Bing. 390; *Elsworth v. Brewer*, 28 Mass. 315.

33. The drawer or indorser of a bill who pays it is a quasi-surety for the acceptor, and the analogy is sufficiently close to entitle him to the benefit of any securities deposited by the acceptor with the holder, and retained by the holder at the time of the dishonor of the bill. *Duncan v. N. & S. Wales Bank*, H. L., 6 App. Cas. 1. See C. C. of L. C., arts. 1156, 1157; *First National Bank v. Ward*, 71 N. Y. 305; *Bechervaise v. Lewis*, L. R., 7 C. P. 377; *Gray v. Seckham*, L. R., 7 Ch. 680; *Pearl v. Deacon*, 1 De G. & J. 461. See section 53.

When an accommodation bill is paid.—

34. Indorsee undertaking with payee to pay a note signed by maker, for the accommodation of the payee, cannot recover from the maker, although no party to the agreement. *Peters v. Waterbury*, 24 N. B. R. 154.

§ 59.

35. One of the defendants in a joint and several note signed it as surety for the other; the principal afterwards applied to the plaintiff's hands to sell and pay the note, but he applied the note proceeds to the payment of another debt due to him from the principal. Held, that this was no defence at law, both the makers of the note being principals. *Morrison v. Kyle*, East T. 1872. N. B. Stev. Dig.

36. But if the indorsee of a bill accepted by the defendant for the accommodation of the payee, and endorsed to him by the latter after maturity, afterwards receives property from the payee for the purpose of satisfying this bill and others, and promises the defendant to destroy the bill. Held, that the judge was right in leaving it to the jury to say whether the plaintiff had not renounced his claim against the defendant. *Watson v. Porter*, 3 Kerr. See sec. 61.

37. A bill is accepted for the accommodation of the drawer. The drawer negotiates the bill, and then takes it up at maturity. Subsequently he re-issues it. The holder cannot sue the acceptor, for the bill is discharged. *Cook v. Lister*, 32 L. J. C. P. 127; *Lazarus v. Cowie*, 3 Q. B. 459; *Jewell v. Parr*, 13 C. B. 909; *Parr v. Jewell*, 16 C. B. 681, 709, Ex. Ch.; *Jones v. Broadhurst*, 9 C. B. 181 and 189; *Ralli v. Denniston*, 6 Exch. 483, 493; *Strong v. Foster*, 17 C. B. 222; *Re Oriental Bank*, L. R., 7 Ch. 102.

38. A bank having discounted the note of A. and B. as maker and indorser, with the knowledge that it was for the accommodation of D., delivered it on the day of maturity to D., who was their solicitor, for protest. D. did not protest or give notice of dishonor, but delivered it to A. and B., adding that he had paid it, held that they were discharged by the laches of the bank. *Canadian Bank of Commerce v. Green*, U. C., 45 Q. B. 81.

Payment in Insolvency.—

39. Holder receiving a part payment from the insolvent estate of the indorser must deduct the same from his claim upon the insolvent estate of the maker. *Bessett v. La Banque du Peuple*, 15 L. C. J. 126; *The Bank of B. N. A. v. Harvey*, 3 N. S. D. 416; *Re Joint Stock Discount Co.*, L. R., 10 Eq. 11; *Re Jacobs*, L. R., 10 Ch. 211; see also 2 *Bédarride*, pp. 452 to 455.

40. Where a debtor has made an abandonment of his property for the benefit of his creditors, and where a creditor in such case holds notes as collateral security on which amounts have been paid on account, such creditor is only entitled to be collocated on the amount of his claim, which remains after having credited the amounts received on account of the notes so held by him as collateral security. *Thibault v. Benning*, 33 L. C. J. 39.

41. A bill for 200*l.*, drawn abroad, is accepted for the accommodation of the first indorser. Acceptor and indorser fail. The holder gets 100*l.* from the acceptor and 100*l.* from the indorser. The indorser's estate pays 15*s.* in the pound. The acceptor, in proving on the contract of indemnity against the indorser, can get 50*l.*, which makes the total amount paid by the indorser on the bill (150*l.*) to be at the rate of 15*s.* in the pound. *Ex parte European Bank*, L. R., 7 Ch. 103.

42. The holder of a bill for 100*l.* accepts a composition of 10*s.* in the pound from the acceptor under Bankruptcy Act 1869, §§ 125, 126. The drawer and indorsers are only discharged to the extent of the sum received by the holder, for the acceptor is discharged by

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operation of law. *Per Jacobs*, L. R., 10 Ch. 211; *Provincial Bank of Ireland v. Dunne*, Ir. L. R., 2 Q. B. D. 21; *Yglesias v. River Plate Bank*, 3 C. P. D. 60. § 59.

43. When the acceptor of a bill becomes bankrupt, any payment made by the drawer or an indorser to the holder must be deducted from the amount for which the holder is entitled to prove against the acceptor's estate. *Ex parte Taylor*, 26 L. J. Bank, 58; *Ex parte Maxonell*, L. R., 6 Eq. 582.

Like any other debt a bill may be discharged by payment, Payment, compensation, novation, release, confusion and prescription.

Subject to the exceptions contained in this chapter, payment discharges a bill like any other obligation, and in the same manner. If payment be made at maturity, the full amount of the bill must be tendered, C. C. art. 1163; but if made thereafter, it must also cover the damages specified in section 57. No payment can be forced before maturity, except at least in the Province of Quebec, when the debtor is insolvent, *en déconfiture*. *Lovell v. Meikle*, 2 L. C. R. 69; *Blacklock v. Papin*, cited in *Girouard*, *Lettres de change*, 176; C. C. art. 1092. See section 51.

Every payment presupposes a debt, and what has been paid by error may be recovered back. C. C. arts. 1047, 1048 and 1149.

Payment must be made at the place indicated in the bill in specie or in legal tender. British Sovereigns, half British Sovereigns and certain United States Eagles, are legal tender. Canadian silver is also legal tender to the amount of ten dollars. Dominion notes are also legal tender in every part of Canada, except at the offices at which they are respectively redeemable, where they must be paid *in specie*. Rev. Stat., cc. 39, 31.

The indication of a bank as a place of payment by one of its customers is a sufficient authority to the bank to pay the bill, although not bound to do so in the absence of special agreement. *Kymer v. Laurie* (1849), 18 L. J. Q. B. 218; *Roberts v. Tucker* (1851) 16 Q. B. 579; *Vagliano v. The Bank of England*, (1889), 58 L. J. Q. B. 27.

Payment must be made to the holder at or after maturity; and if made before maturity, the payer should see that the bill be delivered up. He may wait till maturity to recover from other parties primarily liable, or he may at once re-negotiate the bill. See *supra*, nn. 32, 37, 38, and section 37, nn. 2 and 3.

§ 59.

If the payment be made by the principal debtor, the bill is entirely discharged, saving his recourse for contribution against any other co-debtor.

If the bill be paid by an indorser or other parties secondarily liable, such indorser and all subsequent parties are discharged. The acceptor and maker and the other parties remain liable.

This rule does not apply to every kind of discharge,—for instance, an indorser may be discharged by want of due diligence, or by proceedings in bankruptcy, where the law provides for the discharge of the bankrupt, or by the signing of a deed of composition and discharge at common law. Section 61, nn. 14, 15, 16 and 20. All the other parties to the bill remain liable to the holder.

If a bill be paid by an indorser, he is entitled to the benefit of all securities deposited with the holder by the acceptor or any other party prior to himself. See *Bove v. McDonald*, 16 L. C. R. 191; *Allen v. Kemble*, P. C., Moore 314. Such is undoubtedly the law in Quebec, and it appears also in England. See *supra* n. 33 and section 53. Article 1156 of the Civil Code says: "Subrogation takes place by the sole operation of law and without demand (3), in favor of a party who pays a debt for which he is held with others or for others, and has an interest in paying it." See also *Saul v. Nicolet*, 15 Louis, 246; *Wiggin v. Flower*, 5 Robinson 406.

If a bill be drawn in a set, the acceptor who pays it must see that the part bearing his acceptance be delivered up to him, otherwise he will not be discharged as regards a holder in due course. See section 70, p. 6.

COMPENSATION OR SET-OFF.

See section 36, nn. 8, 20, sect. 38, nn. 1, 3, 4, and section 53, and notes.

44. In Quebec, the indorser has the right to set-off any money due or paid by the holder to the maker of a note since maturity. *Quebec Bank v. Molson*, 1 L. C. R. 116; *Hays v. David*, 3 L. C. R. 112.

45. In Quebec, where there is no direction to the contrary, deposits made in a bank must be computed to the earliest debts of the depositor. *Cleveland v. The Exchange Bank*, 31 L. C. J. 126. See *infra*, n. 53.

46. The maker of a note cannot set-off against an indorsee, who is the holder in due course, any debt due by the payee or indorser. *Rej. 11th Nov., 1813*; S. 15, 1, 197. *Rej. 10th Nov., 1829*, S. 30, 1, 34; *arrêt* of the 3rd September, 1700, reported in 5 *Journal des Audiences*, p. 602.

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§ 59.

47. On the 25th June, 1888, the defendant accepted G's accommodation draft for \$249.75, at three months. On the 24th July, 1888, the defendant purchased goods from G. to the amount of \$215. On the 26th July, 1888, G. made a judicial abandonment for the benefit of his creditors. On the 28th Sept., 1888, defendant paid the accommodation draft.

In a suit by the curator to G's estate for the recovery of the \$215, price of goods, defendant pleaded that he was entitled to compensate this sum with the amount he had paid on the draft for G's accommodation.

Held: 1. That the judicial abandonment definitely settles the relative positions of the insolvent and his debtors and creditors;

2. That from the date of the abandonment, all the unsecured creditors acquire the right to be paid by contribution out of the proceeds of the debtor's estate;

3. That compensation cannot take place to the prejudice of rights acquired by the insolvent's creditors, by reason of the abandonment, and therefore that creditors are without right or compensation for claims maturing after the abandonment. *Riddell v. Goold*, M. L. R., 5 S. C. 170; Cass. 12th February, 1823, cited in 2 Bédarride, 443, 444 *Rej.* 10th July, 1832, S. V. 32, 1, 429.

48. The creditor of a bank in insolvency, who, after proceedings in liquidation, realizes certain negotiable securities deposited with him by the bank as security for certain advances, cannot meet the action of the liquidators for the excess of such advances, by the plea that the bank was indebted to him for another anterior debt, which did not form part of the above advances. *Exchange Bank of Canada v. The City & District Savings Bank*, 14 R. L. 8.

49. Where drafts and notes are placed with a bank by a debtor of the bank, not as collateral security, but for collection, compensation does not take place until the bank has received the amounts collected by them on such notes, and in the present case, the debtor having become insolvent before any amount was received on such notes, compensation did not take place between the amount collected by the bank and the debt due to it. *Exchange Bank of Canada & Canadian Bank of Commerce*, M. L. R., 2 Q. B. 476, 10 L. N. 110.

50. A dividend payable under a dividend sheet, under the Insolvent Act of 1875, cannot be retained by the assignee of the estate, by way of set-off or compensation against a debt due to the assignee by the creditor collocated, as indorser of certain notes given in payment of a sale of the stock-in-trade of the insolvent by the assignee to another party. *Walker & Doutre*, 23 L. C. J. 317.

51. The defendant was entitled to plead to an action on a promissory note, that the plaintiff was under an obligation to deliver to him a note for a larger amount in payment of goods sold and delivered, but had made default, and to ask that the note sued on be declared compensated by so much of what was due by plaintiff. *Quintal v. Aubin*, M. L. R., 1 S. C. 140 & 397, 8 L. N. 60.

52. A defendant sued upon notes cannot oppose in compensation unliquidated damages. *Ontario Bank v. Foster*, 13 R. L. 48.

53. The drawee of a bill of exchange cannot set-off against the drawer funds specially deposited and appropriated by him to the payment of the bill. C. C. 1190, § 2; 18 Laurent, 465; *Aubry et Rau*, 235; Rouen, 6th January, 1849, S. 49, 2, 707; *Rej.* 9th July,

§ 59. 1845, S. 40, l. 969; Cass. 1st June, 1858, S. 58, l. 807, cited in 4 Alauzet 89; Torrance v. Bank of B. N. A., L. R., 5 P. C. 24. See section 53, n. 5. But he can compensate against the holder. See notes under section 19.

54. Upon a note not payable to order, but assigned by a notarial deed at a time when a much larger sum than the amount of the note was due and owing by the payee to the maker, an action cannot be supported, for at the time of the assignment both claims were mutually compensated. *Gibson v. Lee*, 1 R. de L. 347.

55. A debt need not be absolutely *claire et liquide* to be set up in compensation against a debt certain, provided it be easily proved; consequently, an account for goods sold and delivered may be opposed to a debt due under a notarial instrument. *Halt v. Beaudet*, 6 L. C. R. 75; *Ross v. Brunet*, 5 R. L. 229, *Décary v. Pominville*, M. L. R., 5 S. C. 366.

56. But in an action on a promissory note, a plea setting forth that at the time the note became due, the plaintiffs had in their possession goods belonging to the defendants of the value of the note, and that the debt was therefore compensated, is bad, and the value of goods or merchandise cannot be pleaded in compensation to a demand for a sum of money. *Ryan v. Hunt*, 10 L. C. R. 474.

57. To an action on a note, one of the endorsers pleaded payment. It appeared that he had furnished the plaintiff with groceries, the accounts for which were entered in the pass book to have been "settled," but it did not appear that any money passed. The plaintiff having given unsatisfactory replies, when examined as to his payments, it was held that the price of the goods must be deducted from the note. *Angers v. Ermatinger*, 2 L. C. L. J. 158.

58. The defendant cannot offer in compensation of a note his share in the crop of a farm worked in common by plaintiff for defendant, and unaccounted for by plaintiff. This debt is not equally clear and liquidated. *Perrault v. Herdman*, 5 R. L. 229.

59. Plaintiff answered to a plea of compensation or set-off, that the defendant owed him another sum of money exceeding the amount of his set-off. Answer held bad. *Gilbert v. Lionais*, 7 R. L. 339.

60. Compensation must be offered in good faith, and the holder of a note who has kept the maker all the time in ignorance of the fact that he holds such note cannot afterwards run an account with the maker, with the view of offering the latter's note as a set-off. *Pardessus*, n. 235; *Daoust v. Geoffrion*, 12 R. L. 401. The soundness of this doctrine is doubtful, especially if the holder is a holder for value and makes no representation.

61. As to what constitutes a settlement between bankers where there is a clearing-house, see *Warwick v. Rogers*, 5 M. & G. 340; where there is no clearing-house, *Pollard v. Bank of England*, L. R., 6 Q. B. 625. See notes.

62. When a plea of compensation was set up in answer to an action on a cheque, and the claims on which compensation was asked were due before the cheque was given, it was held that the plea was bad. *Dorion v. Dorion*, 5 L. N. 130.

63. The transfer of a note held as collateral security will operate as a compensation between the transferor and the debtors. *Lepage v. Hamel*, 19 R. L. 489.

Compensation is another mode of extinction of obligations on a bill. When two persons to a bill are mutually debtor and creditor of each other for a certain sum of money, the compensation takes place by the sole operation of law, and both debts are extinguished *pro tanto*, and all parties subsequently liable on the bill are discharged, but the two debts must be equally liquidated and demandable. C. C. Arts. 1187, 1188. *Allen v. Keble*, P. C., 6 Moore, 314. At or after maturity, if the maker of a note be the creditor of the owner for a like amount, the two debts are *facto ipso* compensated, and the maker and endorsers are all discharged. But the maker can not set up in compensation what the holder owes the indorser. Likewise, a joint and several maker, what the holder owes to his co-maker, except for the share of the latter in the joint and several debt. C. C. art. 1191. When the two debts are payable at different places, compensation cannot be set up without allowing for the expenses of remittance. C. C. 1193. The above provisions are borrowed from the Civil Code, and apply to the Province of Quebec only.

§ 59.
Compensation
or set-off.

In the other provinces of the Dominion a defendant sued for a liquidated money demand is permitted, but not obliged by law, to set off against the sum which the plaintiff claims, any liquidated money demand from the plaintiff to the defendant. Sometimes, in Quebec, when compensation by the sole operation of law is prevented, compensation may likewise be demanded by exception or pleading. C. C. art. 1194.

In all the provinces, the defendant's set-off may be of a less amount than the plaintiff's claim.

In Ontario, and the other provinces governed by the English law, instead of pleading a set-off, the defendant may, if he likes, bring a cross action, or he may do both; but if he be successful on his pleas of set off, the judgment in the cross action will be proportionately reduced. In Quebec, no cross action can be brought, except for the excess, because compensation takes place by mere operation of law outside of the consent of parties.

In Ontario, a bill to be set off must be due and unpaid in the defendant's hands when the action is commenced, and must remain in his hands at the trial. The debts must be mutual, that is, they must be due to the defendant, or defendants alone, from the plaintiff or plaintiffs alone.

§ 59.

THE CLEARING-HOUSE.

In the year 1889, the inconvenience of daily sending out for settlements with other banks led a number of the chartered banks of Montreal to organise an exchange among themselves, on a somewhat similar plan to that already practised in New York, London, and other large cities of the world. This exchange, which is commonly called *Clearing-House*, is an ancient institution in banking business. It was established in London in 1775, and was then already in existence in Edinburgh. Mas-é, Dr. Com., vol. 4, p. 183, asserts that about the twelfth century the bank of Venice had organized one to adjust the claims of merchants, brokers and bankers dealing at the celebrated fairs held in the leading commercial cities of Europe.

Until recently, the Clearing-House system seems to have been confined to English speaking financial centres. Established in New York in 1853, it has since been introduced into the leading cities of the American Union. It is only within the last few years, however, that it has been adopted in France, Germany, Austria, Italy, and the continent generally.

The magnitude of the operations of clearing-houses, and their practical importance, may be imagined from the following official returns :

<i>Montreal Clearing-House.</i>	Clearings.	Balances.
Week ending Nov. 13th 1890.	\$12,653,278	\$1,558,468
Last week.....	8,799,014	1,235,810
Cor. week last year.....	11,335,520	1,634,051
<i>London Clearing-House</i> , week ending 1st October, 1890 :	Clearings	
	£	177,386,000
Aggregate of 46 weeks :	£	6,965,042,000
<i>New York Clearing-House</i> for the year ending 31st December, 1887 :	\$33,474,756,258	
<i>Paris Clearing-House</i> , for the year ending 1st January, 1886 :	\$768,747,832	
<i>Vienna Clearing-House</i> , for the year ending January 1st, 1886 :	\$1,771,138,171	
<i>Hamburg Clearing-House</i> , for the year ending January 1st, 1886 :	\$1,249,070,196	

The mode of operation is as follows: The bills payable on demand, cheques and bank notes which each bank holds on the

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§ 60.

other clearing banks, are sorted in separate parcels, and at a certain hour, (in Montreal, at 10 A. M.,) are taken by a clerk, accompanied by a messenger, to the clearing-house. In the presence of an inspector appointed by the banks, he delivers to each of the other clerks the obligations he has against his bank, and receives from him the obligations due from his own. After these obligations are interchanged, each clerk returns to his office for verification. At noon all parties return to the clearing-house, to declare their objections and close matters by either receiving or paying in Dominion notes whatever balance may be struck for or against. The object of a clearing-house is evidently to save time and facilitate presentment and settlement of bank notes, cheques and bills on demand held by banks. It has repeatedly been held in England that presentment through the clearing-house is a valid presentment at a bank. Chalmers, 134.

But what is the legal effect of these exchanges? Evidently to operate compensations or sets-off, and the French writers call the clearing-house "chambre de compensation." 4 Alauzet, 474; 4 Massé, 183; Boistel, 591. If no exception be taken at the closing hour, the settlement seems in all respects to be as valid and final as if made in money, except only in the case of fraud or bad faith. See notes under section 55. McLeod on Banking, p. 107. See section 59, n. 8.

But what would be the consequence of the default of the banker to attend at the closing hour? Would this amount to an implied promise to exchange or pay? The decisions on the operations of the clearing-house are few, for the simple reason that they are conducted in an intelligent and strict manner, and that, when a difficulty arises, it is promptly settled among the bankers themselves; but this conclusion may be drawn from the case of *Warwick v. Rogers*, 5 M. & G. 370, that no such promise to exchange or pay can be implied, and that the banker in not returning the bill is only liable in damages for his breach of duty. See also *Pollard v. Bank of England*, L. R., 6 Q. B. 623.

60. When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged. Acceptor the holder at maturity.

§ 61.

CONFUSION.

In his own right.—

Therefore, if the maker become the holder *às qualité*, *v.g.*, as executor of the holder, the bill is not discharged, contrary to the rule of the English common law. *Freakley v. Fox*, 9 B. & C. 130; *Lowe v. Peskett*, 16 C. B. 500; *Strong v. Bird*, L. R., 18 Eq. 315; *Jenkins v. Mackenzie*, U. C., 6 Q. B. 544.

In Quebec, when the qualities of creditor and debtor are united in the same person, there arises a confusion, which extinguishes the obligation. C. C. art. 1198. The confusion avails the sureties. Art. 1199. Therefore, when the maker of a note or the acceptor of a bill becomes the holder of it at or after its maturity, the bill is discharged and the indorsers are released.

Under the French Code, it has been held that confusion takes place even when the acceptor becomes the holder before maturity of the bill. Cass. 11th Dec., 1832, S. V. 35, 1, 140; Rouen, 7th December, 1846, J. P. 47, 1, 285; 4 Alauzet, n. 1352.

But this decision, if ever sound, cannot be followed under section 60 of the Act, which refers only to the acceptor becoming the holder of a bill "at or after maturity." If this happens before maturity, the bill may be again negotiated. Ante, p. 119.

Express
waiver.

61. When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor, the bill is discharged; the renunciation must be in writing, unless the bill is delivered up to the acceptor; ⁽¹⁾

The same.

(2) The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity; but nothing in this section shall affect the rights of a holder in due course without notice of renunciation.

NOVATION AND RELEASE.

See notes.

1. The maker of a note is not discharged in consequence of the discharge granted to the payee by the holder, who knew that the maker had signed for the accommodation of the payee. *Street v. Quinton*, N. B., 2 P. and B. 567; *Sifton v. Anderson*, U. C., 5 Q. B. 305; *Banque Nationale v. Bétournay*, 18 R. L. 175.

(1) *Re Estate Ives*, 7 R. & G. 108, 7 C. L. T. 146.

2. Where the arrest and discharge of the acceptor operates, so far as he is concerned, as a discharge of the debt, the drawer is also discharged, unless the acceptance was for his accommodation. *Hamilton v. Newcomb*, U. C., 11 C. P. 93, U. C., 12 C. P. 38.

§ 61.

3. The indorsee of a note indorsed for the accommodation of the maker, having obtained judgment against the maker and indorser, released the maker, reserving all his rights against the indorser. Held, that he was entitled to do so. *Bell v. Manning*, 11 Chy. 142.

4. A payment by cheque or bills operates no novation, and the old debt is not discharged, if it be dishonored. *Corp. des Chutes de Kingsey v. Quesnel*, 19 R. L. 470; *Robitaille v. Denéchaud*, 5 Q. L. R. 238.

4a. Composition notes not paid at maturity operate no novation and the old debt is not discharged. *McDonald v. Seath*, 34 L. C. J. 81; *Chisholm v. Semple*, Gill, J. S. C. Montreal No. 1754, 17th Nov. 1890. But see *Vincent v. Roy*, M. L. R. 5 S. C. 451.

5. A note given as collateral security for the price of land, and no paid, operates no novation, although prescribed. *Mitchell v. Holland*, Ca. S. C., 12 L. N. 348; *Cass*, 2nd Feby., 1819, cited in 2 Bédarride, 508; *Gilbert sur Sirey*, art. 1273, nn. 7 to 13. *Id.* Suppl. art. 1273, n. 8. But see *Cas*, 15th May, 1839, J. P. 39, 2, 257.

6. A mere statement by the holder of a note, that he would accept an order for the amount thereof, will not amount to a satisfaction of the note where there is no acceptance in writing, and the note is not given up, and the order is obtained again some months after by the person presenting it. *Williams v. Marshall*, U. C., 20 Q. B. 230.

6a. The mere acceptance of a note for an antecedent debt operates no novation of the latter. *Landry v. Beauchamp*, 13 L. N. 169.

RENEWALS.

See notes.

7. Defendant accepted plaintiff's draft at six months, the latter agreeing to renew, if circumstances should prevent defendant from meeting it at maturity. Application for renewal was made shortly after maturity. Held, that defendant was not bound to apply for renewal during the currency of the bill, but that it was sufficient if he did so within a reasonable time after it became due. *Maillard v. Page*, L. R., 5 Ex. 312. See also *Innes v. Munro*, 1 Exch. 473. As to construction of agreements to renew, see *Torrance v. Bank B. N. A.*, L. R., 5 App. Cas. 146.

8. When the holder retains the original bill, a renewal operates no discharge. *Lewis v. Lyster*, 2 C. M. & R. 704; *Lumley v. Musgrave*, 4 Bing. N. C. 15; *Ex parte Barclay*, 7 Ves. jr. 597; *Norris v. Aylett*, 2 Camp. 329; *Kendrick v. Lomax*, 2 Cr. & J. 405; *Fenton v. Blackwood*, L. R., 5 P. C. 167; *Taylor v. Williams*, L. R., 129, 184.

9. The acceptance of a renewal note does not operate novation and discharge, unless there is an express intention to that effect. *Re Estate Ives*, 7 R. & G., 7 C. L. T. 146; *Noad v. Bouchard*, 10 L. C. R. 476; *Lyman v. Chamard*, 1 L. C. J. 285; *Kealy v. Dobson*, Q. R., 8 C. P. 691. See also *Price v. Wyld*, O. R., 11 C. P. D. 422; *Wiley v. Ledger*, 10 P. R. 182; *Cass*, 16th June, 1846, S. V. 46, 1, 440; *Limoges*, 31st January, 1857, S. V. 58, 2, 90; *Rouen*, 14th Nov., 1876, S. 77, 2, 233.

10. This intention is presumed from the surrender of the original

§ 61. note. *Brewster v. Chapman*, 19 L. C. J. 301. See also *Cuvillier v. Fraser*, U. C., 5 Q. B. 152.

11. **Renewing with the indorsers** does not discharge the drawer, acceptor or maker. *Woodbury v. Garth*, 9 L. C. R. 138; *Lyon*, 21st February, 1840; *J. P.* 40, 2, 626; *Douai*, 2nd May, 1848; *S. V.* 48, 2, 318.

12. A. gave B. and C. a note signed by himself, which they discounted. When it matured B. and C. delivered to the holder, by way of renewal, a note purporting to be made by A., like the other note, and which such holder on that faith accepted, and delivered up the old note. It being afterwards alleged that the renewal was not signed by A., but by another person of the same name, unknown to the holder, and resident in a foreign country, Held, that A. could not take advantage of this fraud; that his liability in respect of the note still existed in equity; and that the holder could sue within six years from the discovery of the fraud. *Irwin v. Freeman*, 13 Ch. 465. See *Bank of Montreal v. Syme*, U. C., 18 Q. B. 492, 511; *Brown v. Gordon*, U. C., 16 Q. B. 342, 522; *Campbell v. Belfour*, 16 Ch. 108, p. 531; *Metropolitan Bank v. Shure*, U. C., 10 C. P. 24, 552; *Campbell v. McKinnon*, U. C., 18 Q. B. 612, 483. See also *McDonald v. Everitt*, 3 Kerr, 569.

13. The defendants made a note for \$200, to one M., to assist him in retiring paper in which defendants were interested. M. discounted his own note for \$200 with the plaintiffs, depositing with them the defendant's note as collateral. When M.'s note fell due, the defendant's note being then overdue, he paid \$25 and gave a renewal for \$175, leaving defendants' note with the plaintiff. Per Wilson, C. J. — Defendant's note was not an accommodation note; but assuming it to be so; Held, that the proper inference from the evidence was that it was transferred to the plaintiffs as security for the debt represented by M.'s note, and not for that note specially; and that the defendants remained liable. *The Canadian Bank of Commerce v. Woodward et al.*, 8 A. R. 347.

GIVING TIME.

See notes.

14. Delay granted to the maker or indorser, without the consent express or implied of subsequent parties, discharges the latter. *Bedell v. Eaton*, 2 Kerr, 217; *Thurgar v. Travis*, N. B., 2 A. 272; *Arthur v. Lier*, U. C., 8 C. P. 180; *Commercial Bank v. Johnston*, 2 O. S. 126; *Farrell v. Oshawa Mfg. Co.*, U. C., 9 C. P. 239; *Grant v. Winstanley*, U. C., 21 C. P. 257; *Ryan v. McKerrall*, 15 O. R. 460; *Merchants Bank v. Robinson*, 8 P. R. 117; *Devaney v. Brownlee*, 8 A. R. 355, as distinguished in *Healy v. Dobson*, O. R., 8 C. P. 691; *Shepley v. Hurd*, 3 A. R. 549; *The City Bank v. Hunter*, 2 R. de L. 171; *St. Aubin v. Fortin*, 3 R. de L. 293; *Desrosiers v. Guérin*, 21 L. C. J. 96; *Banque Ville Marie v. Mallette*, 33 L. C. J. 8; *Citizens Bank v. Duque*, 5 A. R. 12; *Carlslake v. Wyatt*, *Steven's Digest* 112, n. 61; *Latham v. Chartered Bank of India*, L. R., 17 Eq. 205; *Cass*, 16th June, 1846; *S. V.* 46, 1, 440; *Larombière*, art. 1273. *Massue v. Crébassa*, 7 L. C. J. 211, overruled, but revived by section 61 of the Act. See notes.

15. The agreement to give time must be precise and binding and not a mere indulgence. *Thompson v. Macdonald*, U. C., 17 Q. B. 304; see also *McLemore v. Powell*, 12 Wheaton, 554.

16. If the delay or extension of time be granted with reservation of

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all rights against the indorsers, the latter are still liable. *Canadian Bank of Commerce*, 14 O. R. 207; *Bank of U. C. v. Jardine*, U. C., 9 C. P. 332; *Owen v. Homan*, 4 H. L. Cas. 997; *Muir v. Crawford*, L. R., 2 Sc. Ap. 456, H. L.; *Cass.* 16th June, 1846, S. V. 46, 1, 440.

17. Where the holder knows, at the time he takes the bill, that a party primarily liable is only for the accommodation or as surety for other parties, and he gives time to the latter, the surety is discharged; otherwise if he has acquired that knowledge after taking the bill. *Bank of U. C. v. Thomas*, U. C., 11 C. P. 515; *Bank of U. C. v. Ockerman*, U. C., 15 C. P. 363.

18. One of the joint makers of a note cannot set up as a defence that he signed it only as surety for the other maker, to the plaintiff's knowledge, and that the plaintiff gave time to the latter without his consent or knowledge. *Davidson v. Bartlett*, U. C., 1 Q. B. 50.

19. Unless there is an agreement with the holder that he will treat that maker as surety for the other. *Ball v. Gibson*, U. C., 7 C. P. 531. See also *Morrison v. Kyle*, East T. 1872; *N. B. Stev. Dig.* As to other illustrations of discharge of surety by dealings before the passing of the Act with the principal, *v. g.*, by renewal or giving time, see *Chalmers*, 206.

SIGNING A DEED OF COMPOSITION.

See notes.

20. Indorser not discharged by deed of composition and discharge granted in insolvency by the holder, the acceptor or drawer or a previous indorser, if he has reserved his remedy against them. *Wool v. Brett*, U. C., 9 Chy. 452; *Commercial Bank v. Wilson*, U. C., 11 C. P. 581; *Poitiers*, 24th August, 1813; *Cass.* 11th February, 1817; 1 *Bélaride*, 330. See notes.

21. Even if no reservation be made. *Cass.* 11th February, 1817, 2 *Bélaride*, 452 to 455; *Gilbert sur Sirey*, C. C., art. 1273, n. 12; *Paris*, 22nd May, 1682, cited in 12 *Duranton*, 476. See notes.

21a. The creditor compounding with his debtor must reserve his collateral securities, otherwise he cannot retain them beyond the amount of the composition, *Heney v. Primeau*, 18 R. L. 271.

21b. Compounding with the indorser does not discharge the maker. *La Banque Nationale v. Betournay*, 18 R. L. 175.

Several of the above decisions, especially under n. 14, must be accepted with caution. Novation and release.

The principle laid down in section 61 is that when the holder of a bill, at or after maturity, renounces his rights against any party, his renunciation must be absolute and unconditional. Otherwise, it will not operate as a discharge. *Chalmers*, p. 199, says that this section alters the English law, and brings it in accordance with Scotch law. The special rule, he adds, seems to have been consciously imported into the law merchant from French law. It seems to go even beyond the French law. Section 61 requires the renunciation to be in writing, unless the bill be delivered up. The French Code as well as the Quebec Code

§ 61. says "that novation is not to be presumed, and that the intention to effect it must be evident." C. C. art. 1171. But this intention may result as well from writings as from facts and circumstances. *Rej.* 14th March, 1834, S. V. 34, 1, 257; *Id.* 9th July, 1834, S. V. 34, 1, 805; *Rouen*, 10th June, 1835, S. V. 35, 2, 361; *Cass.* 31st May, 1854, S. V. 55, 1, 44; *Cass.* 17th December, 1862, S. V. 63, 1, 247; *Zacharie*, vol. 2, n. 323; *Gilbert sur Sirey*, C. C. art. 1273, n. 41; *Lancetot v. Gundlack*, decided by Mr. Justice Taschereau in 1889, just argued in appeal. In appeal, this principle was admitted by both parties.

Under section 61, the writing is required, unless the bill be given up; but even in the latter case, especially when the holder has shown that the surrender of the bill was not intended, the defendant must prove by verbal testimony, or by circumstantial evidence, that the renunciation was absolute and unconditional. Here lies the only distinction to be made between a renunciation accompanied by delivery of the bill and a renunciation without delivery.

Therefore, when the holder of a bill signs a deed of composition and discharge, or takes a renewal note, or grants delay, reserving expressly his remedy against the other parties to the bill, the original bill is not discharged. There is no room for doubt that in those cases there is neither novation, nor discharge, if the holder retain the bill. The parties secondarily liable will probably have the right to plead the extension of time, and pray that the action be declared premature. C. C. art. 1933; *Willis v. Del Castro*, L. R., 21 C. B. 376.

Likewise, when there is no reservation made, the holder is not presumed to renounce, if he has retained the bill, unless the defendant can show by writing that he intended to renounce "absolutely and unconditionally."

The practical lesson of this new law to business men is to reserve expressly their rights and retain the original bill, when they either sign a deed of composition or discharge, or take a renewal, or give time. With that precaution, the safety of their rights is beyond doubt, and the holder who has accepted composition notes can sue for the full amount of the original bill, if they be not paid.

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THE STATUTE OF LIMITATIONS.

§ 61.

Quebec Decisions.

22. A promissory note, payable on demand, is due from the day of its date, and prescription runs against it from that time. *Laroque v. Andre*, 2 L. C. R. 335. Otherwise by sections 36, 45 and 85.

23. The maker of a promissory note may set up in compensation to the payee and bearer of such note another note, made by the same payee more than five years previous, but endorsed to the maker of the first note before the expiration of the time required for the prescription thereof. In such case, prescription cannot be invoked. Such compensation takes place without any notice of the endorsement and transfer of the note set up in compensation being required. The date appearing on such endorsement is sufficient evidence, in the absence of contradictory proof, and when it is not specially denied. *Hays v. David*, 3 L. C. R. 112.

24. The prescription of five years against a promissory note, acquired before the coming into force of the statute, 12 Viet., cap. 22, may be pleaded to an action for the recovery of such note, notwithstanding the repeal of the 34 Geo. III., cap. 22, under which the said prescription has been acquired. *Glackmeyer v. Perrault*, 4 L. C. R. 397.

25. The prescription of five years, under the first part of the 31st section of the 12 Viet., cap. 22, applies to all notes due and payable previous to the passing of the said statute. *Côté v. Morrison*, 8 L. C. R. 252, 2 L. C. J. 207.

26. The prescription of five years established by the Act 12 Viet., cap. 22, is applicable to non-negotiable notes previously made, and it is not necessary to prove payment by oath. A party can, upon an action for goods sold and delivered, plead the giving of a promissory note, at a long date, delivered to his creditor, without proving that it was accepted by the latter. *Lavoie v. Crevier*, 9 L. C. R. 418.

27. A bill operating no discharge of an antecedent debt, unless paid, the creditor may sue upon the original debt, notwithstanding the fact that the note is prescribed. *Robitaille v. Dénéchaud*, 5 Q. L. R. 238; *Mitchell v. Holland*, Ca. 16 S. C. R. 687.

28. Prescription commences to run from the expiration of the last day of grace. *Ste. Marie v. Stone*, 2 Q. B. R. 369; 5 L. N. 322.

29. In an action on a promissory note, it was held that the defendant's absence from the country for seven or eight years did not interrupt prescription. *Darah v. Church*, 14 L. C. R. 295.

30. Payment on account of a promissory note within five years interrupts the statutory prescription, notwithstanding no action is brought within that period. *Torrance v. Philbin*, 4 L. C. J. 287; See also *Boisvert v. Saurette dit Larose*, 19, R. L. 7.

31. The *acte en brevet*, produced in this cause, was not a note under the statute respecting bills of exchange and promissory notes, to which the prescription of five years could apply. *Séguin de la Salle v. Bergevin dit Langevin*, 15 L. C. R. 438, 16 L. C. R. 415; *Pigeon v. Dagenais*, 17 L. C. J. 21; *Gravelle v. Beaudoin*, 7 L. C. J. 289; *Lacoste v. Chauvin*, 7 L. C. J. 339; *Contra Crevier v. Sauriole*, 6 L. C. J. 257.

32. In an action by a non-trader to recover moneys loaned and advanced by him to the defendants, merchants and co-partners, and for which

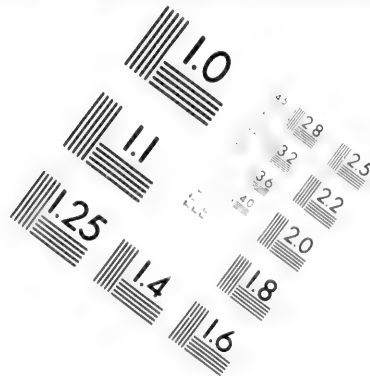
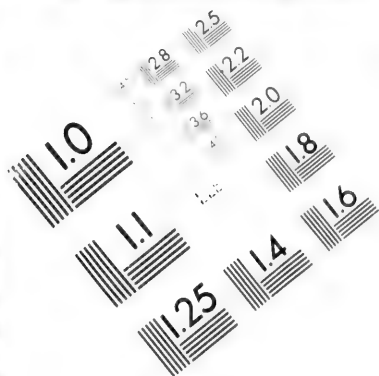
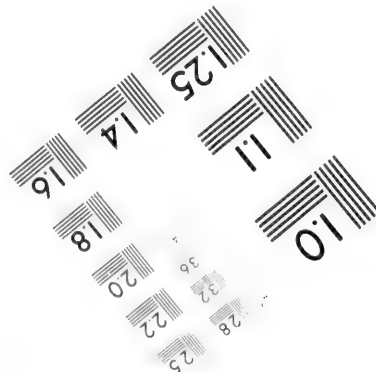
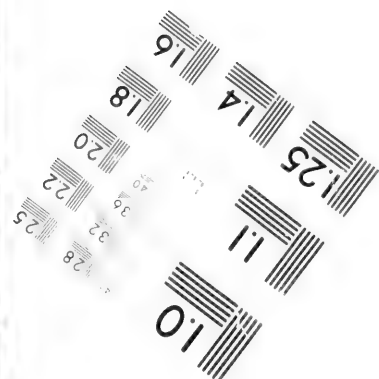
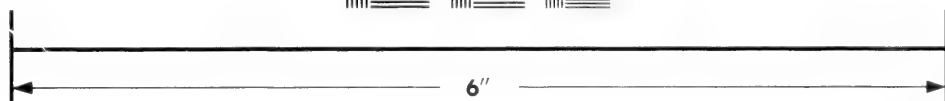
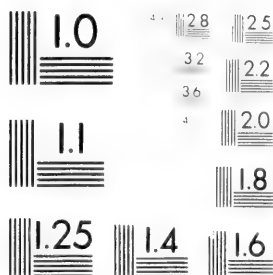


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they gave an acknowledgment in writing by means of a letter, it was held that the acknowledgment contained in the letter in question was not a promissory note against which the prescription of five years could be pleaded, and that the plea of limitation of six years, under C. S. L. C., cap. 67, sec. 1, was not applicable, and that such plea must be dismissed on demurrer. *Gilmour v. Whishaw*, 15 L. C. R. 177. See also *Wurtele v. Girouard*, 6 R. L. 737.

33. On demurrer in an action on a promissory note, that a plea which sets up simply that the defendant had not, within five years, undertaken or promised in manner and form as plaintiffs have complained against him, is a good plea. Under the statute relating to promissory notes (C. S. L. C., cap. 64), every note must be held to be absolutely paid and discharged, if no suit has been instituted within five years from the time when it became due. *Giard v. Giard*, 15 L. C. R. 494.

34. The prescription of five years under the Promissory Note Act, C. S. L. C., ch. 64, is so absolute that no acknowledgment of indebtedness or partial payment will take the case out of the statute, and if no suit or action be actually brought on a note within five years after its maturity, it will be held to be absolutely paid and discharged. *Bowker v. Fenn*, 10 L. C. J. 120, 16 L. C. R. 73, 1 L. C. L. J. 83. But see *infra*, n. 35. See notes.

35. According to the provisions of C. S. L. C., ch. 64, a promissory note will be held to be absolutely paid and discharged five years after it has become due and payable, and no action can be maintained upon it, even against a defendant making default. *Giard v. Lamoureux*, 16 L. C. R. 201, 1 L. C. L. J. 86; *Court v. Thompson*, affirmed in appeal, 1 L. N. 589. See notes.

36. The prescription on claims of a commercial nature is so absolute, that a reserve of plaintiff's recourse, in a judgment rendered in appeal, after the lapse of the prescribing period, will not avail against such prescription. *Janes v. Sun Mutual Ins. Co.*, 7 R. L. 387, 20 L. C. J. 194.

37. The short prescriptions referred to in articles 2250, 2260, 2261 and 2262 of the Civil Code are liable to be renounced and interrupted, in the manner prescribed by art. 2227. *Walker v. Sweet*, 21 L. C. J. 29.

36. A debt originally due under a promissory note, and which has been prescribed by the lapse of five years from the making of such note, cannot be recovered at law, although the defendant may have acknowledged in the presence of a witness, after prescription accrued, that he was still indebted to Plaintiff in the amount of the note and had promised to pay, thus renouncing the benefit of the prescription accrued. *Fiset v. Fournier*, 1 L. N. 589. See *supra*, n. 27.

37. The five years prescription does not apply to a loan not of a commercial nature. If the *bon* or note given in acknowledgment of such loan be prescribed, it cannot serve as a proof of the debt, but the claim may nevertheless be established by other evidence. *McDonald v. Dillon*, 6 L. N. 388, 27 L. C. J. 214, 6 L. N. 291; *Darling v. Brown*, Ca. 1 Sup. C. R. 169; *Ste. Marie v. Stone*, Q. B. R. 360; 5 L. N. 322. See *supra*, nn. 27 and 36.

38. The prescription enacted by articles 2260 and 2267 of the Civil Code constitutes not only a presumption of payment, but a denial of action, and being a presumption of the extinction of the debt, *juris et*

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de jure, it cannot be rebutted even by the oath or *serment décisoire* of the defendant, except in cases not exceeding fifty dollars. *Fuchs v. Légaré*, 3 Q. L. R. 11. § 61.

39. In France, an entry bill or note made by the debtor on his list of liabilities or *bilan* does not constitute a sufficient acknowledgment or *reconnaissance* to defeat the statute of limitations. *Cass.* 10th Dec., 1834; *Riom*, 12th March, 1838; *Bordeaux*, 19th August, 1840, all cited in 2 *Bédarride*, 517. So held likewise in the United States, *Hidden v. Cozzens*, 2 R. L. 401; *Roscoe v. Hale*, 7 Gray 274; *Stoddard v. Loane*, *id.* 387; *Wellman v. Southard*, 30 Maine, 425; *Harman v. Claiborne*, 1 An. 342. But otherwise held in Quebec under the late Canada Insolvent Act. *Seath v. Hagat*, M. L. R. 5, S. C. 427; confirmed in Appeal on other grounds; now pending in the Supreme Court of Canada.

English, Ontario and American Decisions.

40. In England, no action on a bill can be maintained against any party thereto after the expiration of six years from the time when a cause of action first accrued to the *then* holder against such party. *Jac.* 1, c. 16; 3 & 4 Anne, c. 8, s. 4; *Whitehead v. Walker*, 9 M. & W. 506; *Woodruff v. Moore*, 8 Barb. 171, New York.

41. The statute 21 Jac. 1, c. 16, is in force in Ontario, Nova Scotia, New Brunswick and other provinces governed by the English law. Ont., 26 Vict., c. 45, s. 5; Rev. St. N. B., ch. 140, s. 4; Rev. St. N. S., ch. 154, s. 1; N. S., 28 Vict., c. 10, s. 7.

42. The statute 21 Jac. 1, c. 16, s. 3, is not a bar to a set-off, unless the six years have expired before the action is brought. *Walker v. Clements*, 15 Q. B. 1046.

43. A foreign statute of limitations cannot be pleaded, unless it has the effect of extinguishing the contract. *Harris v. Irvine*, L. R., 4 Q. B. 653. See notes under section 71.

44. An acknowledgment to take a case out of the statute must be such an acknowledgment as implies a promise to pay. *Hayden v. Williams*, 7 Bing. 163; *Hart v. Prendergast*, 14 M. & W. 741.

45. An acknowledgment in writing signed by the party sought to be charged defeats the operation of the statute, *v.g.*, the maker of a note twenty years after its maturity signs his name on the back, and adds the date. The holder can sue the maker within six years after this acknowledgment. *Bourdin v. Greenwood*, L. R., 13 Eq. 281; *Re River Steamer Co.*, L. R., 6 Ch. 828; *Chasemore v. Turner*, L. R., 10 Q. B. 500.

46. As upon a bill drawn payable at or after sight, there is no right of action till presentment, so without such presentment the statute does not begin to run. *Holmes v. Kerrison*, 2 Taunt. 323; *Byles on Bills*, 9th ed., 331.

47. And where a note is payable at a certain period after sight, the statute runs from the expiration of that period after the exhibition of the note to the maker. *Sturdy v. Henderson*, 4 B. & Al. 592.

48. If acceptance of a bill be refused, and afterwards at maturity it be not paid, the six years count from the refusal to accept. *Whitehead v. Walker*, 9 M. & W. 506.

49. If a note be made payable at a certain period after demand, it is like a note payable after sight, the demand and the lapse of the spe-

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cified time after demand are conditions precedent, and the statute runs when the time has elapsed. *Thorpe v. Booth*, R. & M. 388.

50. But as a bill or note payable on demand simply is due and payable immediately, the statute runs from the date of the instrument and not from the time of the demand. *Christie v. Fousinch*, 1 Selw. N. P. 136-361.

51. So, a note payable on demand, with lawful interest, is payable immediately, and therefore the statute runs from the date of the note. *Norton v. Ellam*, 2 M. & W. 461.

52. If an accommodation acceptor, having paid the bill, is suing the drawer, the former has six years from the time of paying the money. *Reynolds v. Doyle*, 1 M. & G. 753; *Collinge v. Heywood*, 9 Ad. & E. 633.

53. Where a cheque is given not in payment of any pre-existing debt, but merely as a loan of money, the statute begins to run on it only from the time it is actually paid, and not from the time of its delivery to the party. *Garden v. Bruce*, L. R., 3 C. P. 300; 18 L. T. N. S. 544.

54. The bill of exchange in this action fell due on the 1st December, 1875, and the writ issued on the 1st December, 1881. Held, that the statute began to run on the 2nd December, 1875, and that the action was commenced in time. *Sinclair v. Robson*, U. C., 16 Q. B. 211, remarked upon. *Edgar v. McGee*, O. R., 1 Q. B. D. 287.

55. To make a part payment take a debt out of the bar raised by the Statute of Limitations, it is sufficient if the payment be made in respect of a larger debt which is the one sued on. The payment of part is an act from which the inference may be drawn that the debtor intended to pay the balance, though no special reference is made thereto at the time of such part payment. *Boulton v. Burke*, O. R., 9 C. P. D. 80.

56. The holder of an accepted bill dies intestate before its maturity. The statute does not begin to run until an administrator is appointed. *Murray v. East India Co.*, 5 B. & Ald. 204; *Maxwell v. Tuhill*, 1 Ir. L. R. Ch. D. 250.

57. The holder of a bill at the time of its dishonor is a minor, or a married woman, or a lunatic. The statute does not begin to run against such holder until the disability ceases. *Scarpellini v. Atcheson*, 7 Q. B. 864.

58. Note payable on demand with interest. Four years after its issue the holder sues the maker for interest, and recovers. Three years later (i.e., seven years after issue of note) the holder sues the maker on the note. The action is barred. *Aliter* if the payment of interest has been voluntary. *Morgan v. Rowlands*, L. R., 7 Q. B. 493; *Harding v. Edgecumbe*, 28 L. J. Ex. 313.

59. Note payable three months after demand. Interest is paid on it, as appears from indorsements on the back of the note. This is evidence of a demand, and the statute begins to run from the first payment of interest. *Brown v. Rutherford*, 14 Ch. D. 687.

60. When the statute begins to run nothing stops it. It is clear then that if a dishonored bill be indorsed to an infant the time still runs on. *Rhodes v. Smethurst*, 6 M. & W. 351; *Bradbury v. Baillie*, N. B., 1 A. 690.

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interest does not take the case out of the statute. *Graham v. Keys*, 29 Pen. St. 189.

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62. The debtor, saying that he was willing to settle and give his note, but that he thought there was not credit enough allowed him, is not a sufficient acknowledgment. *Mills v. Taber*, 5 Jones, 412; *Stockett v. Sasseer*, 8 Md. 374; *Mitchell v. Sellman*, 5 id. 376.

63. Nor is an offer to pay apparently arising from a desire to avoid trouble. *Chambers v. Garland*, 3 Greene, Iowa, 322.

64. Nor is a proposition to refer to arbitration as to whether the debtor shall pay anything. *Broodie v. Johnson*, 1 Sued. 464.

65. Nor is an offer first accepted but finally refused of paying a part in full discharge. *Smith v. Eastman*, 3 Cush. 355; *Cawley v. Farnell*, 12 C. B. 291; *Mitchell v. Sellman*, 5 Md. 376.

66. "I know that it is due, but I will never pay it," is not a sufficient acknowledgment. *Wainman v. Kynman*, 1 Exch. 118; *Scales v. Jacob*, 3 Bing. 638; *Ayton v. Bolt*, 4 id. 105; *Fearn v. Lewis*, 6 id. 349; *Brigstocke v. Smith*, 1 Crompt. & M. 483; *Spong v. Wright*, 9 M. & W. 629.

67. When the defendant, at a previous trial, said he would not take advantage of the statute, and if the debt was just he would pay it, but contended that the debt was not just, this was not a good acknowledgment. *Carruth v. Paige*, 22 Vt. 179, affirming *Phelps v. Stewart*, 12 id. 256.

68. Nor was a letter sufficient, running: "I am surprised at receiving A.'s letter for the recovery of your debt. I never shall be able to pay cash, but you may have any of the goods we have at Y." *Cawley v. Farnell*, 12 C. B. 291, 6 Eng. L. & Eq. 397.

69. The same was held, where the defendant, being asked to pay a note as he agreed to do, answered that folks did not always do as they agreed. *Douglas v. Elkins*, 8 Foster, 26.

70. Where the acceptor of a bill had acknowledged his acceptance and former liability, but said he was not liable then because it was out of date, etc., the bill was taken from the statute. *Leaper v. Tatton*, 16 East. 420.

71. But where the acceptor refused to pay, because there was no consideration for his acceptance, the statute barred the debt. *East-erly v. Pullen*, 3 Stark, 186.

72. Where the maker of a note said that in the end he thought he should have to pay, this was a sufficient acknowledgment, though he added, "that enough had been paid to pay the debt, if it had been paid when it should have been." *Phelps v. Williamson*, 26 Vt. 230.

73. So, "I supposed the note was paid by A., and if he does not, I shall have to pay it," took the case out of the statute. *Hayden v. Johnson*, id. 768.

74. When the defendant said he had no money, but would call and settle the debt with his creditor, "and did not intend to cut him out of it," it was sufficient. *Smith v. Leaper*, 10 Fred. 86.

75. When A.'s debt to B. was barred, and on B.'s requesting a settlement, A. assented, and asked if no other notes than his own would do, —B. answering, "Yes, if they are good," — these facts made no implied promise. *Taylor v. Spivey*, 11 id. 427.

76. "I hope to be in H. very soon, when I trust everything will be

§ 61. arranged with Mrs. W. agreeably to her wishes," was held a good implied promise to pay. *Edmonds v. Goater*, 15 Beav. 415, 9 Eng. L. & Eq. 203.

77. So were the written words, "I shall repeat my assurance of the certainty of your being repaid your generous loan," etc. *Collis v. Stack*, 1 H. & N. 605, 38 Eng. L. & Eq. 487.

78. So where the defendant said, if he owed the plaintiff anything he was willing to pay him, but claimed that he did not owe him anything. *Steele v. Towne*, 28 Vt. 771.

79. But a letter of the defendant, saying: "As I do not recollect the date or the amount of the indorsements, I would thank you to send me a statement of them," is not a sufficient recognition of the debt. *Gibson v. Grosvenor*, 4 Gray 606. *Contra*, *Brown v. Keatch*, 24 Conn. 73.

80. A conditional offer to pay does not amount to a new promise. *Tyson v. McGill*, 15 Louis. 145.

81. Creditors may avail themselves of the prescription of notes placed by an insolvent on his *bilan*. La. C. C. art. 3429. *Larhet v. Hogan*, 1 An. 330; *Girod v. Creditors*, 2 An. 546. See *supra*, n. 39.

82. The action occurred to the plaintiff, an indorser, when the note was transferred to him, and this being more than six years after it was due, his absence beyond the seas was immaterial. *Bradbury v. Baillie*, N. B., 1 A. 690.

83. Where a note is payable in instalments, each instalment will be subject to a separate plea of prescription. *Montgomery v. McNair*, N. B., 2 A. 31.

Prescription.

The Act contains provisions on payment in section 59, on confusion in section 60, on novation and release in section 61, and a reference to compensation or set-off in section 2, subsect. (b), but is silent as to prescription or limitation of actions on bills and notes. The Canadian Parliament undoubtedly thought that as pre-cription of bills and notes, as understood in England, affects especially the remedy, the subject should be left to the Provincial Legislatures, together with the rules of evidence, as matters of procedure only. It is to be regretted that Parliament has not deemed it advisable to look upon prescription as a discharge of the debt, and to introduce a uniform mode of limitation of the rights of the holder by lapse of time, subject to such equitable reservations and exceptions as would secure their continuance in cases of renunciation or interruption by waiver, partial payment or acknowledgment. As the Act stands, the rights of the parties with regard to prescription remain governed by the local laws of each province. In Quebec, the prescription will be of five years from maturity of the bill, and in the remainder of the Dominion it will be of six

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years, subject probably to the same causes of renunciation or interruption by partial payment, waiver or acknowledgment. But as to absentees, infants and other disabled parties, the rules vary.

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The Promissory Notes Act of 1849, 12 Vict., c. 22, s. 31, following the language of the old French ordonnance of 1673, provided that all bills and notes due and payable in Lower Canada should be presumed and considered as absolutely paid and discharged, unless an action was instituted within the five years following their maturity. This statute was silent as to interruption or renunciation of prescription, and the Court of Appeals held, in *Bowker v. Fenn*, that no acknowledgment or partial payment would interrupt prescription, even if made in accordance with the provisions of the statute 10 and 11 Vict., c. 11, corresponding to the Imperial statute, 9 Geo. IV, c. 14, or the Ont. Rev. St., ch. 117.

The Civil Code has adopted another language. Article 2260 reads as follows: "The following actions are prescribed by five years: 4. Upon inland or foreign bills of exchange, promissory notes, or notes for the delivery of grain or other things, whether negotiable or not, or upon any claim of a commercial nature, reckoning from maturity; this prescription however does not apply to bank-notes."

Article 2267 adds: "In all the cases mentioned in articles 2250, 2260, 2261 and 2262, the debt is absolutely extinguished, and no action can be maintained after the delay for prescription has expired."

In 1876, the Court of Appeals, Sanborn, J., dissenting, held, in *Walker v. Sweet*, that the prescription referred to in article 2260 is liable to be renounced and interrupted in the manner prescribed in article 2227, the judges forming the majority remarking that the decision in *Fenn v. Bowker* had taken the Bar by surprise.

Art. 2227 says: "Prescription is interrupted civilly by renouncing the benefit of a period elapsed, and by any acknowledgment which the possessor or the debtor makes of the right of the person against whom the prescription runs."

The decision in *Fenn v. Bowker* was rendered under the Act of 1849, and, whether sound or unsound, is at present of no prac-

§ 61. tical value. The rule laid down in *Walker v. Sweet* must be accepted as settled law until reversed by a higher Court; and in face of the following articles of the Civil Code, it is difficult to conceive that it will be overruled.

Art. 1229 says: "No indorsement or memorandum of any payment upon a promissory note, bill of exchange or other writing, made by or on behalf of the party to whom such payment is made, is received in proof of such payment, so as to take the debt out of the operation of the law respecting the limitation of actions."

Art. 1235, "In commercial matters in which the sum of money or value in question exceeds fifty dollars, no action or exception can be maintained against any party or his representatives, unless there is a writing signed by the former, in the following cases:

1. "Upon any promise or acknowledgment whereby a debt is taken out of the operation of the law respecting the limitation of actions." See also Louisiana Code, art. 3505; Hennen's Dig., vol. 2, p. 1283.

A partial payment, to operate as an acknowledgment for the balance of the debt, must, like the latter, be in writing and signed by the debtor. If the payment be indorsed on the note, the indorsement must be signed by the debtor. Such is the meaning of Article 1229 and the express provision of 10 and 11 Vict., c. 11. Such is the law in Ontario (1) and also in England, 9 Geo. L. C. 14; Ont. Rev. St., ch. 117, 56.

Under article 2341 of the Code, the English rules of evidence apply to Quebec cases on bills of exchange and promissory notes.

The promise or acknowledgment must be such as to imply a promise to pay.

It is not necessary that there should be an express promise to pay, since an admission, recognition or acknowledgment of the debt may be such that the law will raise therefrom an implied promise to pay it. But in order to produce that effect, the acknowledgment must be voluntary, clear, explicit, direct and unqualified, that the debt is due. *Hayden v.*

(1) See *Sand v. Keator*, 3 Kerr, 329; *Vanwarth v. Roberts*, *ibid.* 572.

Williams, 7 Bing. 163; Hart v. Prendergast, 14 M. & W. 741; § 61.
 Williams v. Griffith, 3 Exch. 335; Wakeman v. Sherman, 5
 Seld. 85; Kensington Bank v. Patton, 14 Penn. St. 479; Bell
 v. Morrison, 1 Peters, 351.

Before the Act, the *donneur d'aval* was bound by the acknow-
 ledgment of the principal debtor. C. C. art. 2228. But under
 section 56 of the Act, every signature other than that of the
 drawer, maker or acceptor is an "indorser," who cannot be a
 surety within the meaning of article 2228. See also Town v.
 Morgan, 2 Louis. 113; Haggett v. Rightor, 4 Robinson, 18, 10,
 11 Viet., c. 11. Hennen Dig., vol. 2, p. 1286.

But will a renunciation or acknowledgment, made after pres- ^{Prescription}
 cription is already acquired, revive the bill as in England? ^{acquired.}

In England prescription seems to affect only the remedy, but
 in Quebec it affects the contract also.

Art. 2267 declares that the debt is absolutely extinguished,
 and that no action can be maintained after the delay for pres-
 cription has expired. The extinction of the debt by prescrip-
 tion constitutes a presumption *juris et de jure*, within the mean-
 ing of Art. 1239 of the Civil Code, and cannot be contradicted.
 No judgment upon a prescribed bill can therefore be rendered,
 even in a default action, and the oath of the defendant or his
serment décisoire cannot be demanded as in France. C. C.
 art. 2188.

Art. 2227 says that prescription is interrupted, and therefore it
 would seem that its provisions do not apply to the case of pres-
 cription fully acquired. See also art. 2264.

But what inference is to be drawn from articles 2184 and
 2229, except that prescription already acquired can be renounced.
 Art. 2184 says: "Prescription cannot be renounced by anti-
 cipation, (1) That acquired may be renounced, and so may
 also the benefit of any time elapsed by which prescription is
 begun." Art. 2229: "Renunciation by any person of a pres-
 cription acquired does not prejudice his co-debtors, his sureties,
 or third parties."

In the case of Walker v. Sweet, the acknowledgment was made

(1) No one can validly stipulate that his obligation shall not be subject to the Sta-
 tute of Limitations. Carraby v. Navarre, 3 Louis. 262; Segond v. Landry, 1 Ro-
 binson, 335.

§ 61. during the pendency of the prescription, and therefore its decision has no bearing upon the question of renunciation made after. It may however be observed that Mr. Justice Ramsay, one of the codifiers, in giving the history of the articles of the Code upon the subject, in *Walker v. Sweet*, says: "I may say, that from the first draft of the title of prescriptions in the Code down to the adoption of the Code, the idea of the renunciation and interruption of prescriptions—of the absolute prescription called a bar—was never lost sight of." 21 L. C. J. 33.

In *Fiset v. Fournier*, Mr. Justice Bossé, 1 L. N. 588, held, that a verbal acknowledgment would not revive a note prescribed. The editor of the *Legal News*, upon the authority of *Fiset v. Fournier* and *Court v. Thompson*, supra, n. 33, is inclined to the opinion that "the defendant cannot waive the benefit of prescription already acquired by any acknowledgment that he may make, and that the Court is absolutely without jurisdiction in such cases." The report in *Fiset v. Fournier* is so meagre, that it is impossible to infer that a written acknowledgment would not have that effect.

As to *Court v. Thompson*, the Superior Court and the Court of Appeals simply held that in a default case, prescription would be enforced *ex officio*. The plaintiff had alleged nothing in his declaration but the prescribed note, and according to article 2267 the action was denied. But when the plaintiff alleges the prescribed note and a written acknowledgment, a new contract is set forth, and in face of articles 2184 and 2229 and of the jurisprudence prevailing abroad, it would seem difficult to dismiss plaintiff's action. It will be prudent, however, in all cases, when practicable, to secure a new bill.

It may be noticed that under the Code of Louisiana renunciation or interruption of prescription already acquired may take place; but that it is in the nature of a renewal of the obligation, and the acknowledgment must be of the particular specific debt. Proof that the party acknowledged, in conversations with the witnesses, that he was largely indebted to the plaintiff, is insufficient. Although the renunciation may be tacit, it must result from a fact creating a presumption of the relinquishment of the right, and necessarily and strongly connected with the debt to be revived. *Conway v. Williams*, 10 Louis. 568; *Cour-*

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tebray v. Rils, 9 Robinson 511; Buard v. Lémée, 12 id. 243. § 62.

In Quebec, prescription of bills and notes runs against absentees, married women, minors or infants, and insane persons, saving their recourse against the parties who by law represent them. C. C. 2232, 2234, 2236, 2269. Absentees, etc.

The thief of a bill or note cannot invoke its prescription. C. C. 2198. As to conflict of prescriptions, see arts. 2190 and 2191 and section 71 of the Act.

Mr. Clarke, p. 190, says: "The statute 21 James 1, c. 16, which applies in the Province of Ontario, contains a provision that if any person entitled to the action shall, at the time of the cause of action accrued, be an infant, married woman, insane, imprisoned, or beyond the seas, then such person may bring the action within six years after the removal of the disability."

"In the Provinces of Nova Scotia and New Brunswick, actions by and against infants, married women, persons insane or out of the Province, may be commenced within the like period after the removal of the disability, as is allowed for bringing the action in ordinary cases. Rev. St. N. B., c. 140, s. 11; Rev. St. N. S., c. 153, s. 10.

"In Ontario, the 25 Viet., c. 20, repeals the statute of James as to persons out of the Province and in Nova Scotia; the 28 Vic, c. 10, s. 7, repeals the Revised Statutes as to persons in a similar position. The 21 James 1, c. 16, applicable to Ontario, does not give any longer time when the defendant is absent from the Province, nor does the 25 Viet., c. 20, the latter statute only applying to the plaintiff's absence. The Statute 4 and 5 Anne, c. 16, s. 19, enacts that if at the accruing of the action the defendant be beyond the seas, the plaintiff may bring his action within six years after the defendant's return. Prior to the passing of the 26 Viet., c. 45, s. 6, in Ontario, if one of several co-defendants, jointly liable on a bill or note, were abroad, the statute did not begin to run against any of them. But, as we have already seen, the latter preserves the protection of the 21 James 1, c. 16, to such of the defendants as are within this Province at the time the action accrued."

62. Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged; Cancellation of bill.

§ 62.
Of any signature.

(2) In like manner, any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case, any indorser who would have had a right of recourse against the party whose signature is cancelled is also discharged;

Erroneous cancellation.

(3) A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where a bill or any signature thereon appears to have been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.

1. A holder cancelling all the indorsements on a note does not lose his recourse against the maker. *Barthe v. Armstrong*, 5 R. L. 213; *Biggs v. Wood*, 2 Ma. R.; *Morris v. Cude*, 57 Tex. 337.

2. Where the indorsee of a note produces it at the trial from his own custody, with an indorsement thereon which has been cancelled, not as if by any accident, but in a most unequivocal manner, some explanation must be given for rejecting the inference that the note has been satisfied by the indorser whose name is thus cancelled. *Peel v. Kingsmill*, U. C., 7 Q. B. 364. See sections 29, nn. 1, 2, 3, sect. 30, nn. 9, 10 and 11.

3. The holder of a bill strikes out the acceptor's signature, in order to cancel it. This is a waiver of the acceptance, and discharges the bill. *Aliter* if the cancellation be not apparent, and it be negotiated to a holder for value before maturity. *Ingham v. Primrose*, 7 C. B. N. S. 82.

4. W. drew a bill on the defendants, payable to his own order, and the latter accepted it. The bill was indorsed by W. and other subsequent parties, and again to W., who long after maturity endorsed it to the order of the plaintiff. When produced, the bill appeared with all the special endorsements struck out, leaving only the signature of W., with the last endorsement to the order of the plaintiff. Held, that it was to be inferred that W. had satisfied any claim of the holder, and had procured or had the right to make the cancellation of previous special endorsements. *Callow v. Lawrence*, 3 M. & S. 95, cited and followed. *Black v. Strickland*, O. R. 3 Chy. D. 217.

5. When a cheque is torn into four pieces, and afterwards pasted together and much soiled, it was held to carry notice on its face sufficient to put a purchaser upon inquiry, and the bank paying the cheque without inquiry was held liable for the amount. *Scholey v. Ramsbottom*, 2 Camp. 485. See section 29, nn. 1, 2, 3, sect. 30, nn. 9 and 10.

6. If the holder tells his wife to burn a note, and she fails to do so, the maker will not be discharged. *Campbell's estate*, 7 Penn. St. 100. § 63.

7. Where an acceptance payable at a banker's is cancelled by him by mistake, this will not render him liable for its payment, unless there is negligence on his part. *Warwick v. Rogers*, 5 Man. & G. 340; *Wilkinson v. Johnson*, 3 B. & C. 428; *Raper v. Birkbeck*, 15 East 17.

8. The drawee cannot cancel his acceptance after having notified the holder that he has so accepted. See section 21, n. 3. See notes under section 17.

63. Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is voided, except as against a party who has himself made, authorized, or assented to the alteration, and subsequent indorsers; Alteration of bill.

Provided, that where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor; Proviso.

(2) In particular, the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent. What are material alterations.

See sections 12, 13, 20, 24, 54 and 55 and also 77.

The following alterations have been held to be material and to void the note even in the hands of a *bonâ fide* holder for value.

1. Fraudulently writing a note over a signature written on a piece of paper merely to indicate an address. *Ford v. Auger*, 18 L. C. J. 296.

2. The alteration of the date. *Gladstone v. Dew*, U. C., 9 C. P. 439; *Reg. v. Craig*, U. C., 7 C. P. 239, 241; *Banque Ville Marie v. Primeau*, 4 L. N. 20; 1 Q. B. R. 24; *Quebec Bank v. Ogilvie*, 3 Q. B. R. 200; *Engel v. Stourton*, 53 J. P. 535; *Hirschman v. Budd*, L. R., 8 Ex. 171; *Société Générale v. Metropolitan Bank*, 21 W. R. 335. But the alteration of the date cannot be opposed by the maker if his liability be not increased. Ante, p. 28, n. 6; and *Canada Investment Co. v. Brown*, 19 R. L. 364; see also pages 536. See notes.

63.

3. The alteration as to time or place of payment. *Mercedith v. Culver*, U. C., 5 Q. B. 218; *McQueen v. McIntyre*, U. C., 30 C. P. 426; *Cowie v. Hall*, 4 B. & Ald. 197.

4. The indorsement of a rate of exchange. *Hirschfield v. Smith*, L. R., 7 C. P. 340.

5. Adding the words "without protest" or "without recourse" after the indorsement is perfect. *Luth v. Stewart*, 6 V. L. R. 383; *Farmer v. Rand*, 14 Me. 225, 284; 3 Randolph, § 1753.

6. Fraudulently obliterated a contingency. *Campbell v. McKinnon*, U. C., 18 Q. B. 612.

7. Making a note "joint and several" instead of joint. *Samson v. Yager*, 4 O. S. 2.

8. The alteration of a memorandum, part of the bill, restricting indorsement. *Swaisland v. Davidson*, O. R., 3 Chy. R. 320.

9. Making a note negotiable. *Lawton v. Millidge*, 2 Kerr, 520.

10. Altering the responsibility of payee by writing his name at the foot of the note apparently as maker. *Reid v. Humphrey*, 6 A. R. 603.

11. A printed form of note, with all the blanks filled in and complete in every respect, except that it had not been signed by the intended makers, was handed by them to defendant, endorsed by defendant for their accommodation and handed back to them, when they, without defendant's knowledge, added, after the words "value received," the words "with interest at ten per cent. per annum," then signed it, and transferred it for value to plaintiff. Held, that defendant was discharged. *Halerow v. Kelly*, U. C. 28 C. P. 551.

12. Any alteration which changes the operation of the bill and the liability of the parties, whether the change be prejudicial or not, is a material alteration. *Craighead v. McLoney*, 99 Penn. s. 211; *Johnston v. May*, 7 Ind. 293; *Gardner v. Walsh*, 5 E. & Bl. 83; 3 Randolph, § 1743. See notes.

13. At common law a material alteration, by whomsoever made, avoids and discharges the bill, except as against a party who made or assented to the alteration. *Davidson v. Cooper*, 11 Ma. W. 799; 13 M. & W. 343; *Hamelin v. Bruck*, 9 Q. B. 306.

The following alterations have been held not material:

14. A memorandum at the foot of the note that it is payable at a particular bank. *Junard v. Pozzer*, 2 Kerr, 365; *City Bank v. Girard*; *Girard, Lettres de Change*, 59.

15. Retracing in ink what is written in pencil. *Reid v. Roark*, 17 Tex. 329; *Dunn v. Clements*, 7 Jones, 58.

16. The correcting of a mistake. *London and Prov. Bank v. Roberts*, 22 W. Pr. 402; *Hamelin v. Bruck*, 9 Q. B. 310; *Brutt v. Picard*, R. & M. 37; *Cariss v. Tattersall*, 2 M. & Gr. 890; *Warwick v. Rogers*, 5 M. & G. 370.

17. Adding the word "agent" to signature. *Manufacturers Bank v. Folette*, 11 R. I. 92.

18. Adding the name of the bank to a blank indorsement, signed "A. B. cashier." *Bank of Genessee v. Patchin Bank*, 13 N. Y. 309.

19. Or converting a blank indorsement into a special one. *Foote v. Bragg*, 5 Blackf. 363.

20. Writing address below signature. *Marston v. Petit*, 1 Camp. 82; *Struthers v. Kendall*, 41 Penn. St. 214.

21. Correcting a name misspelt. *Derby v. Thrall*, 49 Vt. 413; *Cole v. Hills*, 44 N. H. 227; *Mouchet v. Cason*, 1 Brev. 307. § 63.

22. Held, that even if the note sued on—given for a composition agreed upon with the creditors of an insolvent, of whom the plaintiff was one—was altered after the endorsers had signed it, by adding the words “with interest at seven per cent.,” there was ample evidence (set out in the report of the case) to shew that it was so altered, while in the hands of the assignee, to conform to the original intention and agreement of the parties, and that the endorsers subsequently assented to it. *Fitch v. Kelly*, U. C., 44 Q. B. 578.

23. A joint note made by two persons appeared on its face to have been altered in the date.

The note was delivered to the plaintiff by an agent of one of the makers (defendants) in its altered state; the other defendant was called as a witness, and stated that he could not write, or read writing beyond his own name, and could not say that the note had been altered since he signed it. Held, sufficient for the jury to infer that the alteration was made before the note was signed. *Street v. Walsh*, Trin. T. 1862, N. B. Stev. Dig.

24. A note was made by filling up an engraved form. Between the words “after date” and “promise to pay” the space left for the usual words “I” or “we” was very small, and the words “jointly and severally” which were added before delivery could not have been written in the space. Held, that in such a case the mere fact that the words “jointly and severally” are plainly interlined by being written over the place where they are intended to be read, but in the same hand-writing as the rest of the note, is not sufficient notice of an alteration. *Waterous Engine Works Co., Limited, v. McLean*, 2 Ma. R. 276.

25. The indorsee of an altered bill, bearing marks of infirmity and indeed of knavery, cannot be considered an innocent holder. *Swaishland v. Davidson*, O. R., 3 Chy. 320.

26. A bank whose draft has been altered as to amount cannot recover back the amount paid by them from an innocent third party who has parted with the money. *Union Bank v. Ontario Bank*, 24 L. C. J. 309; see also *Ryan v. The Bank of Montreal*, 12 O. R. 39; 2 Pardessus, 342.

Section 63 should be read together with sections 12, 20, 24, Alteration-54, 55 and 62, which all, more or less, refer to forged or altered instruments. These provisions are all borrowed *verbatim* from the English Act, with the exception of the last proviso in section 24. This proviso was introduced in substitution of section 60 of the English Act, or section 60 of the Canadian bill:

“When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and

§ 63. the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority."

This section was the reproduction of the Imperial Statute, 16 and 17 Viet., c. 59, § 19, but has not yet found its way into our statutes. Therefore, the decisions rendered under it and quoted by Chalmers, at p. 197, should be received with caution, if not altogether disregarded.

Section 20 provides that blank signatures or inchoate instruments must be filled up within a reasonable time, and strictly in accordance with the authority given; but that even if filled up contrary to this provision, it is valid and effectual for all purposes in the hands of a holder in due course. See section 20 and cases cited under it.

According to section 24, forged or unauthorized signatures are wholly inoperative, and no right to retain the bill or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired even by a holder in due course, *through or under that signature*, unless that party is *stopped* from doing so under sections 54 and 55 of the Act.

The effect of section 63 is that a material alteration avoids the bill as to all parties, except as against one who has himself made authorized or assented to the alteration, and all subsequent indorsers. So, a forged indorsement will transfer no title, but a genuine indorser will be liable to his indorsee; the acceptance of a bill may be a forgery, without rendering other genuine signatures ineffectual.

A material alteration avoids the bill, no matter by whom made, whether by a party to it or by a stranger. *Bank of Hindustan v. Smith*, 36 L. J. C. P. 241. In the United States, it is held that an alteration by a stranger is an act of "spoliation" and does not discharge the parties, unless the alteration be made while the instrument is in the custody of the owner. 3 Randolph, § 164.

A material alteration avoids the bill, even when made in such a skilful manner as to deceive a careful and intelligent person, and a banker or acceptor, who, in such a case, pays the bill as altered, cannot recover it back from the drawer. "There is no direct authority in our law upon the subject," said plaintiff's

counsel in the case of *Ha'll v. Fuller*, decided in England in 1826; "but the very point is discussed in Pothier's Treatise du Contrat de Change, p. 1, c. 4, sect. 99, p. 59." "Lorsque le banquier, sur qui j'ai tiré une lettre de change de 100 livres, trompé par la falsification de la lettre, paie 300 livres au porteur de la lettre, le paiement qu'il a fait de la somme de 200 livres de plus qu'il n'est porté par la lettre n'est pas un paiement qu'il fasse *ex causâ mandati*, en exécution du mandat dont je l'ai chargé; on peut seulement dire qu'il l'a fait à l'occasion du mandat; la falsification de la lettre qui l'a induit en erreur, et qui lui a causé la perte de la somme qu'il a induement payée, est un cas fortuit, qui n'a ni été ni pu être prévu, et dont on ne peut pas dire par conséquent que j'ai voulu me charger de le dédommager." 5 B. & C. 750. The Court sanctioned the ruling of Pothier.

§ 63.

Of course a party, who has himself made or assented to the alteration, is not discharged.

Where a party executes a bill, and delivers it with any material part left blank, that party will be presumed, against a holder in due course, to have authorized the filling of such blank. See section 20.

A material alteration, not authorized or assented to, will not avoid a bill in the hands of a holder in due course, where a space is left by the negligence of the parties signing, and any subsequent party is thereby enabled to raise the amount or otherwise to alter the bill; the party guilty of the negligence is held to be estopped from setting up the alteration in his discharge, provided such negligence be the direct and proximate cause of the alteration. *Pagan v. Wylie*, 1 Ross Lead. Cas. 194; *Helwege v. Hibernia National Bank*, 28 La. An. 520; *Young v. Grote*, 4 Bing. 253; 3 Randolph, 1770; *Chalmers*, 8; *Dorwin v. Thompson*, 13 L. C. J. 262; *Garrard v. Lewis*, 6 L. N. 62; *Union Bank v. Ontario Bank*, 24 L. C. J. 309. But negligence in the indorsement will not excuse an alteration in the body of the bill. *Swaissland v. Davidson*, O. R., 3 Chy. D. 324. "If it be the fault of the customer," said Lord Best, C. J., in *Young v. Grote*, in 1827, "that the banker pays more than he ought, he cannot be called on to pay again. That principle has been well illustrated by Pothier, in commenting on the case put by Scachia: "Cependant, si c'était par la faute du tireur que le

§ 63.

banquier eût été induit en erreur, le tireur n'ayant pas eu soin d'écrire sa lettre de manière à prévenir les falsifications, *par exemple*, s'il avait écrit en chiffres la somme tirée par la lettre et qu'on eût ajouté zéro, le tireur serait en ce cas tenu d'indemniser le banquier de ce qu'il a souffert de la falsification de la lettre, à laquelle le tireur, par sa faute, a donné lieu; et c'est à ce cas qu'on doit restreindre la décision de Seachia." 1 Ross, 138; see also Seine, 26th June, 1864; Paris, 13th May, 1865, both cited in 5 Alauzet, nn. 1403, 1410; Nîmes, 19th April, 1875, D. 66, 2, 210.

Alteration
not apparent.

Finally, whether there be or be not neglect in writing out the bill, the holder in due course is entitled, under the proviso of section 63, to recover from all parties to the bill, according to its original tenor, *provided the alteration be not apparent*.

"The proviso," says Chalmers, p. 201, "was introduced in committee to mitigate the vigor of the common law rule in favor of a holder in due course." Such is also the law in France, Nîmes, 19th April, 1875, D. 76, 2, 210; 2 Pardessus, n. 453; Alauzet, nn. 1406, 1408; and was applied in *Manitoba Waterous Engine Works Co. v. McLean*, 2 Ma. R. 276.

What constitutes an apparent alteration is a question of fact to be determined according to the circumstances of each case. 3 Randolph, § 1784 to § 1786.

It must be remarked, finally, that section 63 does not define what constitutes a material alteration, but only instances or particularizes in sub-section 2 some of the most important, namely, any alteration of the date, the sum payable, the time and the place of payment, and the "crossing" of a cheque. Sect. 77. Thus, the Act settles the point, doubted in some cases, as to whether the maker of a note is discharged by such an alteration in the date as would extend the term of payment. See section 13, n. 6. The maker is discharged, but will remain liable on the original consideration. But in so particularizing, the Act has not changed the general principle that any alteration which modifies the operation of the bill and liabilities of the parties is material. See *supra*, nn. 4, 5, 6, 7, 8, 9, 10 and 12. See also 3 Randolph, §§ 1744, 1748 to 1752; and also 1756 and 1760.

Letter of
advice.

To guard against forgery or any alteration of the bill, it is customary among bankers and merchants, especially in the case of a

foreign bill, to advise by letter of the issue of the bill, giving at the same time all its particulars. This letter is called letter of advice, and a reference to it is made in the bill by putting at the end of it the words "with further advice" or "as per advice," *ante*, p. 12. The insertion of these words does not render the bill conditional, but the drawee is not bound to accept or pay without such advice; and if he does it is at his own peril. Story, § 65, Chalmers, 171. § 63.

Where the advice fails to reach the drawee in due time, the holder is not obliged to wait, but should proceed against the drawer and indorsers, just as if the advice had been received.

Forgery of a bill or note, or of any part, or uttering, knowing to be forged, is felony. See Appendix. Forgery, false pretences, etc.

Inducing a person by violence or threats to execute a bill or note or other valuable security is also made a felony. Ca. Rev. St., c. 173, sec. 5.

Fraudulently to obtain by false pretences a signature to a bill or note, or the destruction of the instrument in whole or in part, is a misdemeanor. Ca. Rev. St., c. 164, s. 78.

Agents, clerks and employees generally embezzling, or otherwise fraudulently disposing of a bill or note entrusted to them, are guilty of a misdemeanor. Ca. Rev. St., ch. 164, s. 59 and fol.

The fraudulent signing of a bill or note for any other person by procuration or otherwise, without lawful authority, or knowingly uttering the same, is forgery and felony. C. Rev. St., c. 165, sec. 30. See also Byles on Bills, 14th ed. 342.

§ 64.*Acceptance and Payment for Honor.*

Acceptance
for honor
suprà protest.

64. Where a bill of exchange has been protested for dishonor by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *suprà* protest, for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn ;

See section 15.

In part.

(2) A bill may be accepted for honor for part only of the sum for which it is drawn ;

Requirements
for validity.

(3) An acceptance for honor *suprà* protest, in order to be valid, must :—

(a) Be written on the bill, and indicate that it is an acceptance for honor ;

(b) Be signed by the acceptor for honor ;

For whose
honor.

(4) Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer ;

Computation
of time.

(5) Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of protesting for non-acceptance, and not from the date of the acceptance for honor.

Liability of
acceptor for
honor.

65. The acceptor for honor of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it

has been duly presented for payment and protested for non-payment, and that he receives notice of these facts; § 66.

(2) The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he had accepted. To what parties.

66. Where a dishonored bill has been accepted for honor *suprà* protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor, or referee in case of need; Presentment to acceptor for honor.

(2) Where the address of the acceptor for honor is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honor is in some place other than the place where it was protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him; Time for presentment.

(3) Delay in presentment or non-presentment is excused by any circumstance which would excuse delay in presentment for payment or non-presentment for payment; Excuses for non-presentment or delay.

(4) When a bill of exchange is dishonored by the acceptor for honor, it must be protested for non-payment by him. Protest for non-payment

67. Where a bill has been protested for non-payment, any person may intervene and pay it *suprà* protest, for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn; Payment for honor *suprà* protest.

- § 67.
If more than
one offer to
pay.
- (2) Where two or more persons offer to pay bill for the honor of different parties, the person whose payment will discharge most parties to the bill shall have the preference;
- Attestation. (3) Payment for honor *suprà* protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honor, which may be appended to the protest or form an extension of it;
- Basis thereof. (4) The notarial act of honor must be founded on a declaration made by the payer for honor, or his agent in that behalf, declaring his intention to pay the bill for honor, and for whose honor he pays;
- Liabilities and rights in such case. (5) Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged; but the payer for honor is subrogated for and succeeds to both the rights and duties of the holder, as regards the party for whose honor he pays and all parties liable to that party;
- Delivery to payer for honor. (6) The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest. If the holder does not on demand deliver them up, he shall be liable to the payer for honor in damages;
- Effect of refusal to receive payment. (7) Where the holder of a bill refuses to receive payment *suprà* protest, he shall lose his right of recourse against any party who would have been discharged by such payment.

§ 67.

The intervention of a third party who accepts or pays for honor is not of frequent occurrence. The text books contain very few cases on the subject, and the provisions of the Act are so complete, that explanations are hardly necessary. Acceptance for honor can take place only after protest for non-acceptance or protest for better security. Sec. 64. By section 92, it is sufficient that the bill has been noted.

As remarked by Pothier, the obligations arising from an acceptance for honor are those of *negotiorum gestorum*. *Contrat de Change*, n. 3 ; 1 Bédarride, 379.

The drawee, after having refused, may accept for honor as well as a stranger to the bill. The holder may refuse to allow an acceptance for honor, when necessary, protest and give notice of dishonor, and at once sue the drawer and indorsers, sect. 43 (2) ; but if he accept it, he is bound to wait till the maturity of the bill. Chalmers, 129. The latter is calculated from the date of the noting for non-acceptance and not from that of the acceptance for honor.

The acceptor for honor undertakes to pay the bill according to the tenor of his acceptance in the event of its not being paid by the drawee, provided it be presented for payment to the drawee and protested for non-payment, as provided for in sections 65 and 66.

The acceptor for honor is no longer bound to give notice of his acceptance to the person for whose honor he has accepted ; and in this respect the law of Quebec has been changed. See Art. 2297 C. C. L. C.

An acceptance for honor benefits only the parties subsequent to the person for whose honor it is made. Art. 2296 C. C. L. C. If the bill is not presented in due time to the acceptor for honor, any party, who would have been discharged if he had paid the bill, is discharged by the holder's *laches*. An acceptor for honor is bound by the estoppels binding upon an ordinary acceptor.

Payment for honor *suprà protest* may also take place for the honor of any party liable on the bill or for that of the person for whose account it is drawn, called *donneur d'ordre*. Persons who thus pay a bill stand with respect to the other parties to the bill in the situation of the party for whom the payment is made. *Hutchison v. Monroe*, U. C., 8 Q. B. 103.

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Payment for honor must be attested by a notarial act, section 68, and the party paying must state for whose honor he pays. If he should however omit so to state, he is presumed to acquire all the rights of the holder. Rej. 9 Dec. 1872, D. 15, 1, 564.

Acceptance or payment *supra* protest is known in France as *acceptation ou paiement par intervention*.

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Lost Instruments.

68. Where a bill has been lost before it is over-^{holder's right to duplicate of lost bill.} due, the person who was holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever, in case the bill alleged to have been lost shall be found again;

(2) If the drawer, on request as aforesaid, re-^{If refused.} fuses to give such duplicate bill, he may be compelled to do so.

69. In any action or proceeding upon a bill, the^{Action on lost bill.} court or a judge may order that the loss of the instrument shall not be set up, provided an indemnity is given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question.

See *Wante v. Robinson*, 2 R. de L. 29; *Beaupré v. Bern*, 2 R. de L. 31.

1. A person suing on a lost note should, before action, tender an indemnity to the maker. If he neglect this, it will be at the risk of costs to defendant. *Banque Jacques-Cartier v. Strachan*, U. C., 5 P. R. 159.

2. Proof of the loss by parol testimony, after first making an affidavit to that effect, held legal evidence. *Carden v. Ruiter*, 9 L. C. J. 217.

3. No indemnity is due if the bill be not negotiable. *Cooley v. Dominion Building Society*, 1 L. N. 49; 24 L. C. J. 111.

4. Where the bill is lost after being filed in court, plaintiff to proceed as if lost before. *Lewis v. Walters*, 16 L. 640; L. C. R. 4 Q. B. 256.

§ 69.

5. An action upon a note not filed will be dismissed. *Hudson v. Gironard*, 21 L. C. J. 15; *Bank of Montreal v. Snider*, U. C., 18 Q. B. 492.

6. But where in a suit to enforce payment of promissory notes that had been lost, after maturity, the defendant allowed the bill to be taken *pro confesso*, and omitted to make any demand for security against the notes, the court made a decree for payment without requiring the plaintiff to give security. *Abell v. Morrison*, 23 Chy. 109.

7. Where a note had been endorsed to an attorney's clerk in the course of business, and mislaid. Held, that secondary evidence of it could not be given without calling the clerk, although the attorney was called, and sworn to his belief of its loss. *Grove v. Clark*, 5 O. S. 208.

8. In an action on a note, where the making of the note is admitted, for instance, by a plea of payment. Quere, whether the plaintiff must produce and file the note before having his verdict recorded. *Mullholland v. Morley*, U. C. 7 L. J. 323.

9. Indemnity due each time the plaintiff cannot produce the instrument. Paris, 19th Nov., 1866, D. 67, 2, 47.

Lost bill.

The fact that a bill has been lost or destroyed does not excuse presentment for payment, protest and notice of dishonor. Sections 49 (c), 51 (8).

Chalmers, p. 216, remarks that the remedy given by the Act, in the case of a lost instrument, is very inadequate, and not so complete as that provided in the Continental Codes, as it gives no power to obtain an indorsement or acceptance over again. Where proof is made, however, of the loss of the bill, and a bond of indemnity offered, all parties to the bill will be held liable. Art. 2316 C.C. says: "Payment of a lost bill of exchange may be recovered upon the holder making due proof of the loss, and also, if the bill be negotiable, on giving security to the parties liable, according to the discretion of the court."

The Act is also defective, inasmuch as it does not bind a Canadian indorser of a bill drawn abroad to obtain and supply a new bill. In France, the last indorser is bound, like the drawer, to supply a new bill. 2 Pardessus, 279.

If no tender of an indemnity be made before suit, the plaintiff is not entitled to costs. *King v. Zimmerman*, L. R., 6 C. P. 466.

Where a bill is drawn in a set, the acceptor is entitled to indemnity, if the part containing his acceptance be lost. *Rej. 3rd. May 1837*, D. 37, 1, 314.

Under the French Code, Art. 155, and under the ordinance

of 1673, tit. 5, art. 20, the surety who gives the bond is discharged after the lapse of three years, in the absence of any proceeding against him during that time, but it would seem that in Canada he will remain liable as long as the bill is not prescribed.

§ 69.

§ 70.*Bill in a Set.*

As to bills in
sets,

70. Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill ;

If indorsed to
different per-
sons.

(2) Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills ;

If negotiated to
different
holders.

(3) Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is, as between such holders, deemed the true owner of the bill ; but nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the part first presented to him ;

Acceptance.

(4) The acceptance may be written on any part, and it must be written on one part only ;

If more than
one part is ac-
cepted.

(5) If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill ;

Payment
without deli-
very of proper
part.

(6) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a

holder in due course, he is liable to the holder § 70. thereof;

(7) Subject to the preceding rules, where any ^{Discharge.} one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.

Foreign bills of exchange are usually drawn in sets of several ^{Bills in a set.} parts, all of which the drawer is bound to deliver to the payee. C. C. L. C. art. 2284. See *supra*, p. 12.

The acceptor should be careful to accept one part only, and not to pay the bill unless the part he has accepted be surrendered to him. When there is no acceptance, he may pay the first holder who presents himself. This is also the law in France. *Rej.* 4th April 1832, D. 32, 1, 349.

Parties negotiating two or more parts to different persons are liable just as if the latter form separate bills. It has been held in France, that the indorser who thus negotiates several parts of a bill cannot set up the want of diligence, inasmuch as he is deemed guilty of fraud and liable as a new drawer. *Rej.* 4th April 1832, D. 32, 1, 349; 2 *Pard.* 319. But perhaps the Act will not bear such an interpretation.

If indorsed to the same person, it would seem, according to Chalmers, p. 219, that the payment of one part would discharge the others, subs. 7. But how about the rights of third parties, who in good faith and for value have acquired any of these parts which are not delivered up?

It seems therefore more prudent, if not altogether necessary, to adhere to the old rule, that an indorser is not bound to pay a dishonored set, unless all the parts bearing his indorsement are delivered up to him or accounted for. *Société Générale v. Metropolitan Bank*, 27 L. T. N. S. 854.

The parts of a set must be distinguished from copies of a bill. ^{Copies.} An indorsement may be written on a copy, section 32; but the indorser should be careful to issue an exact transcript of the bill and of the indorsements and memoranda found thereon, and to indicate where the copy ends and the original indorsement begins.

§ 70.

In France this is effected by the insertion of the words "jusqu'ici copie," or "a copy as far as this," written after the last copied indorsement. For instance, A. indorses an original bill bearing other indorsements. He issues a copy of the bill, mentioning all previous indorsements except his own, and he indorses the copy after the words "a copy as far as this." It has been held that he would be responsible, as if he had indorsed two separate bills. Paris, 14th January, 1830. "Attendu que si, après avoir négocié l'original, le donneur d'ordre crée une copie dans laquelle, relatant tous les divers endossements, il omet de mentionner celui qu'il a donné, et appose immédiatement après les endosseurs antérieurs ces mots : *jusqu'ici copie*, il peut laisser croire, aux tiers auxquels la copie est présentée, que les endossements portés sur l'original s'arrêtent aux mots *jusqu'ici copie*, et que cet original n'a pas été endossé par lui ; il crée ainsi deux titres, et commet une imprudence des suites de laquelle il s'expose à devenir responsable, etc." 1 Béd. 153 ; Byles, 14th ed. 136.

Conflict of Laws.

71. Where a bill drawn in one country is negotiated, accepted or payable in another, the rights, duties and liabilities of the parties thereto are determined as follows:—

(a) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or acceptance *supra* protest, is determined by the law of the place where such contract was made: Validity, how determined.

Provided that:—

Proviso.

(1) Where a bill is issued out of Canada, it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue;

(2) Where a bill, issued out of Canada, conforms, as regards requisites in form, to the law of Canada, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold or become parties to it in Canada;

(b) Subject to the provisions of this Act, the interpretation of the drawing, indorsement, acceptance, or acceptance *supra* protest of a bill, is determined by the law of the place where such contract is made: Drawing, indorsement, &c.

- § 71. Provided, that where an inland bill is indorsed in a foreign country, the indorsement shall, as regards the payer, be interpreted according to the law of Canada ;
- Proviso.
- Duties of holder. (c) The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonor, or otherwise, are determined by the law of the place where the act is done or the bill is dishonored. ⁽¹⁾
- Currency. (d) Where a bill is drawn out of but payable in Canada, and the sum payable is not expressed in the currency of Canada, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable. ⁽²⁾
- Due date. (e) Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable ;
- Evidence of protest. (f) If a bill or note, presented for acceptance, or payable out of Canada, is protested for non-acceptance or non-payment, a notarial copy of the protest and of the notice of dishonor, and a notarial certificate of the service of such notice shall be received in all courts, as *primâ facie* evidence of such protest, notice and service.

Sections 4 and 51.

(1) *City Bank v. L y*, U. C., 1 Q. B. 192; *Smith v. Hall*, U. C., 3 Q. B. 315; *Matthewson v. Carman*, U. C., 1 Q. B. *ibid.* 259; *Buttala Bank v. Truscott*, 1 Ont. Dig. 495.

(2) *Judson v. Raynes*, U. C., 6 Q. B. 360.

§ 71.

1. A note being dated at Halifax, and meant to be used there—being given by one British subject to another, and having no relation to foreign transactions—the French law could not be invoked to determine the liability of the maker, although, at the time of making, the maker, a Nova Scotian, was resident in Paris. *The Merchants Bank v. Stirling*, 1 R. & G. 439.

2. Where a bill was drawn in New York by a citizen of Toronto upon a Toronto firm, in favor of a New York firm, for gambling transactions on the New York Stock Exchange, which are held illegal by the laws of the State of New York, the case must be decided by the latter. *Story v. Mackay*, 15 O. R. 169.

3. Where a draft drawn in New York and accepted in Montreal is payable generally, it is payable in Canadian currency. *Capcutt v. McMaster*, 7 L. C. J. 340; *McCoy v. Dinneen*, 8 L. C. J. 339; *Daly v. Graham*, 8 L. C. J. 340; *Chapman v. McFee*, 1 R. L. 192; *Hooker v. Leslie*, U. C., 27 Q. B. 295.

4. When a note is payable in the United States, it is not necessary to prove here the value of the dollars and cents in the States, as we have a corresponding currency, and no standard for American currency is fixed by law. *Griffin v. Judson*, U. C., 12 C. P. 430.

5. *Quere*, whether, in an action on a note drawn and payable in Boston, it is necessary to prove presentment there, there being no evidence that presentment is necessary by the law of that country. If necessary, it may be waived by a subsequent promise to pay the note. *Allen v. McNaughton*, N. B., 4 A. 234.

Mr. Justice Story, in his work upon the Conflict of Laws, § 232, Conflict of Laws.

“It is easy to see, that in the common intercourse of different countries, many circumstances may be required to be taken into consideration before it can be clearly ascertained what is the true rule by which the validity, obligation, and interpretation of contracts are to be governed. To make a contract valid, it is a universal principle, admitted by the whole world, that it should be made by parties capable to contract; that it should be voluntary; that it should be upon a sufficient consideration; that it should be lawful in its nature; and that it should be in its terms reasonably certain. But upon some of these points there is a diversity in the positive and customary laws of different nations. Persons capable in one country are incapable by the laws of another; the public policy of one country permits or favors certain agreements which are prohibited in another; the form prescribed by the laws of one country to ensure validity and obligation of contracts are unknown to another; and the rights acknowledged by one country are not commensurate with those belonging to another. A person sometimes contracts in one country and is domiciled in another, and is to pay in a third, and sometimes the property

§ 71. which is the subject of the contract is situate in a fourth; and each of these countries may have different and ever opposite laws affecting the subject-matter. What then is to be done in this conflict of laws? What law is to regulate the contract, either to determine the rights or the remedies, or the defences growing out of it, or the consequences flowing from it? What law is to interpret its terms, and ascertain the nature, character, and extent of its stipulations? Boullenois has very justly said, that these are questions of great importance, and embrace wide extent of objects."

A lengthy review of the subject of conflict of laws as far as relating to bills of exchange is not within the scope of the present work. Volumes have been written upon that branch of the law, and in cases of doubt or such as are unprovided for by the Act, the learned treatises of Story, Wharton, Westlake, Phillimore, Burge, Pothier, Savigny, Boullenois, Fœlix, Pardessus, Fiore, Laurent, and others, should be consulted. It is sufficient here to lay down a few general principles either sanctioned by the Act or well settled by jurisprudence.

Capacity.

With regard to the capacity to contract, it is said by Mr. Justice Story, "that foreign jurists generally hold that the law of the domicile ought to govern in regard to the capacity of persons to contract." 241. This doctrine was maintained in *Guépratte v. Young*, 4 De Gex and Sm. 217; but in several other English cases, the *lex loci contractus* was held to govern in determining the capacity of a person to enter into a contract. *Male v. Roberts*, 3 Esp. 163; *Cosio v. De Bernales*, 1 C. & P. 266, Ry. & Moo. 102; *Stephens v. M'Farland*, 8 Ir. Eq. Rep. 444. See also *Paris*, 17th June, 1834, S. 34, 2, 371 and 657; *Nonguier*, n. 861; *Pardessus*, n. 482.

The Quebec Civil Code, art. 6, has adopted the rule laid down by continental jurists: "An inhabitant of Lower Canada, so long as he retains his domicile therein, is governed, even when absent, by its laws respecting the status and capacity of persons; but these laws do not apply to persons domiciled out of Lower Canada, who, as to their status and capacity, remain subject to the laws of their country."

It can hardly be argued that this article of the Code is repealed

by section 71, subs. (b), enacting that "the interpretation" of the contract is to be determined by the law of the place where it is made. The capacity to contract must be distinguished from the interpretation of the contract. § 71.

As a general rule, the form and validity of a contract depend upon the law of the country where it is entered into. Thus, an indorsement in blank, which is null in France, will also be null in this country; it will operate here as in France only as a "procuration," but of course the law of France must be proved. *Trimbay v. Vignier*, 1 Bing. N. C. 151, 4 Moore & Scott 695; *Bradlaugh v. De Rin*, L. R., 3 C. P. 538, 5 C. P. 473; *Burrows v. Jemimo*, 2 Stra. 733; *Alves v. Hodgson*, 7 T. R. 241; *Sudlow v. The Dutch Rhinish Railway Company*, 21 Beav. 43; *Scott v. Pilkington*, 2 B. & S. 11; *Branley v. The South Eastern Railway Company*, 12 C. B. (N. S.), 63, 72; *Trèves*, 28th April, 1809, S. 0, 2, 1; *Req.* 20th May, 1885, D. 88, 1, 82; *Paidessus*, n. 1485; *Merlin*, Rép. vo. *Lettre de Change*, § 2; 2 Vincens, 182; 2 Massé, 140; 1 Neuguier, 477; 4 Alauzet, 51 and 172, where several *arrêts* are collected. Form and validity

A contract would not be enforced if it is of an immoral character or made in fraud of our laws or against laws of public policy, as understood in this country. *Holman v. Johnson*, 1 Cowp. 341; see also *Pellecat v. Angell*, 2 Crompt. Mees. & R. 311; *Eposito v. Bowden*, 7 Ell. & Bl. 763.

But a contract will be valid in this country, although it may be entered into in evasion of the revenue laws of another country. *Boucher v. Lawson*, Ca. t. Hardw. 85; *Lever v. Fletcher*, 1 Park. Mar. Ins. 506; *Planché v. Fletcher*, 1 Doug. 251; *Simeon v. Bazett*, 2 Mau. & S. 94; S. C., on appeal, nom. *Bazett v. Meyer*, 5 Taunt. 824; *Sharp v. Taylor*, 2 Phil. Ch. Rep. 801. See also *Bristow v. Sequeville*, 5 Ex. 275; *Clegg v. Levy*, 3 Camp. 166. So the Act declares that a foreign bill is not invalid by reason only that it is not stamped in accordance with the law of the place of issue, sub-sect. (1). See *Chalmers*, 222.

Although gambling debts contracted in this country, as well as securities given for them even in a foreign country, are void and cannot be recovered in this country, nevertheless, it seems that

§ 71. gambling of itself is not considered to be so contrary to morality as to prevent money won at play, or lent for the purpose of gambling, in a country where the games in question are not illegal, from being recovered in the Courts of this country. *Quarrier v Colston*, 1 Phil. Ch. Rep.

It appears to be clear that the law of the country where the contract was entered into must furnish the rule both as to its nature, extent of obligation and interpretation. *Ferguson v. Fyffe*, 8 C. & F. 140; see also *Campbell v. Dent*, 2 Moo. P. C. C. 292; *The Peninsular and Oriental Steam Navigation Company v. Shand*, 3 Moo. P. C. C. 2; *Trimby v. Vignier*, 1 Bing. N. C. 159; *De la Vega v. Vianna*, 1 B. and Ad. 284; *British Linen Co. v. Drummond*, 10 B. & C. 903. This principle is embodied in section 71, subs. (b). The country where a bill of exchange is signed and endorsed is the place of the contract, although blanks in it may be filled up in another country. *Snaith v. Mingay*, 1 Mau. & Selw. 87.

Lex loci solutionis.

Where parties enter into a contract in one country to be performed in another, that contract, as to its validity, nature, obligation and interpretation, will be governed by the law of the place of performance, according to the old maxim *Contractus in eo loco intelligitur in quo ut solveret se obligavit*. Story, *Conflict of Laws*, § 280; *Robinson v. Bland*, 2 Burr. 1078; *Duncan v. Cannan*, 18 Peav. 128; 7 De G. Mac. & G. 78; *Este v. Smyth*, 18 Beav. 112; *Fife v. Round*, 6 W. R. 282; *Bannatyne v. Barrington*, 9 Ir. Ch. Rep. 406; *Burgess v. Richardson*, 29 Beav. 487, 494; *Van Gratten v. Digby*, 11 W. R. M. R. 230; *Grell v. Levy*, 12 W. R. C. P. 378. Trèves, 20th Frim. an. 14, S. 7, 2, 1032; *Dupuis de la Serra*, ch. 15, n. 12; *Pothier*, n. 155; *Paris*, 29th March, 1836, S. V. 36, 2, 457; *Alger*, 18th August, 1848, S. V. 49, 2, 464; 1 Boullenois, 372; *Fœlix*, Dr. Int., n. 75; *Troplong*, Pres., n. 38. Quære, how far the principle of the *lex loci solutionis* is applicable under section 7, sub-sections (b), (c) and (e).

Thus an English note, payable to bearer, is negotiable by delivery in a country where this mode of transfer is not recognized. *De la Chaumette v. Bank of England*, 2 B. & Ad. 385. Section 71, sub-sect. (b).

§ 71.

Likewise, the time of payment of a bill is to be calculated according to the law of the country where the bill is made payable, for example, the days of grace. Also presentment for acceptance or payment, the protest and the notice of dishonor must be regulated by the law of the country where the bill is payable. *Rothschild v. Currie*, 1 Q. B. 43; *Hirschfield v. Smith*, 1 Law Rep. C. P. 340; sect. 71, sub-sect. (c).

For the same reason interest is payable by the acceptor according to the rate of the country where the bill is payable. *Cooper v. The Earl of Walgrave*, 2 Beav. 282; *Connor v. Bellamont*, 2 Atk. 382; *Ranelagh v. Champante*, 2 Vern. 395; *Ekins v. East India Company*, 1 P. Wm. 395; *Cash v. Kennion*, 11 Ves. 314; *Robinson v. Bland*, 2 Burr. 1077; *Montgomery v. Budge*, 2 Dow. & C. 297; *Ferguson v. Fyffe*, 8 C. & F. 121, 140; see *vide Arnott v. Redfern*, 2 Carr. & P. 88. See authorities cited under section 57, p. 195.

The drawer and indorser will however always be liable according to the *lex loci contractus*. *Allen v. Kemble*, 6 Moore P. C. 314; *Robinson v. Bland*, 1 W. B. 234, 256, and 2 Burr. 1077; *Cooper v. The Earl of Walgrave*, 2 Beav. 282; *Rothschild v. Currie*, 1 Q. B. 43; *Gibbs v. Fremont*, 9 Exch. 25; *Horne v. Rouquette*, 3 Q. B. D. 514; *Story, Conflict of Laws*, §§ 307, 314.

"It was contended," said the Right Hon. T. Pemberton Leigh in delivering judgment of the Privy Council in *Allen v. Kemble*, "that when payment is to be made in a place different from that where the contract is made, the parties must be held to have contracted with reference to the law of the place of payment, and not of the place of contract, according to the maxim of the civil law, '*Contraxisse unusquisque in eo loco intelligitur in quo ut solveret se obligavit*.'" And it is argued, that this bill being drawn payable in London, not only the acceptor, but the drawer must be held to have contracted with reference to the English law.

"This argument, however, appears to us to be founded on a misapprehension of the obligation which the drawer and indorser of a bill incurs. The drawer, by his contract, undertakes that the drawee shall accept and shall afterwards pay the bill according to its tenor, at the place and domicile of the drawee, if it be drawn and accepted generally, at the place appointed for payment, if it be drawn and accepted payable at a different place from the place of domicile of the drawee. If this contract of the drawer be broken by the drawee, either by non-acceptance or non-payment, the drawer is liable for payment of the bill, not where the bill was to be paid by the drawee, but where he, the drawer, made his contract, with his interest, damages, and costs, as the law of the country where he contracted may allow.

71.

In every case of a bill drawn in one country upon a drawee in another, the intention and the agreement are that the bill shall be paid in the country upon which it is drawn. But it is admitted, that if this payment be not so made, the drawer is liable, according to the laws of the country where the bill was drawn, and not of the country upon which the bill was drawn. What, then, is the consequence of altering, in the bill itself and by the acceptance, the place at which the acceptor is bound to pay? Can it be more than this, that as to the acceptor the *locus solutionis* is altered, and, therefore, as to him, the *lex loci solutionis* is altered? But how does this affect the liabilities of the other parties? These bills are addressed to Mr. Mackie, Stranmaier, Scotland; if no place of payment had been mentioned, they would have been payable by the drawee, according to the law of Scotland. London being fixed as the place of payment, they are payable by the drawee according to the law of England; a different law is imported as regards the acceptor, but not as affects other parties."

Discharge.

A discharge of a debt in the country where it was contracted is a discharge of it everywhere. *Potter v. Brown*, 5 East, 124; *Ballantine v. Golling*, Cooke's Bankrupt Law, 1st ed. 347; *Hunter v. Potts*, 4 T. R. 182; *Quelin v. Molisson*, 1 Knapp, 266 n.; *Quin v. Keefe*, 2 H. Bl. 553; *Gardiner v. Houghton*, 2 B. & S. 743.

A discharge in bankruptcy, however, obtained in a foreign country is no bar to a suit for a debt contracted in this country. *Smith v. Buchanan*, 1 East, 6; see also *Lewis v. Owen*, 4 B. & Ald. 654; *Phillips v. Allan*, 8 B. & Cres. 477; *Rose v. McLeod*, 4 Shaw & Dunl. 311; *Bartley v. Hodges*, 1 B. & S. 375; *in re Robinson*, 11 Ir. Ch. Rep. 385; overruling *Royal Bank of Scotland v. Cuthbert*, 1 Rose, 486.

Lex fori.

Whatever relates to the remedy or mode of enforcement of a contract must be determined by the *lex fori*, that is, the law of the country to the tribunals of which the appeal is made. *Penn. v. Lord Baltimore*, 2 Tud. L. Cas. Eq. 837. Lord Tenterden, C. J., in *De la Vega v. Vianna*, 1 B. & Ad. 284, said:—"A person suing in this country must take the law as he finds it; he cannot, by virtue of any regulation in his own country, enjoy greater advantages than other suitors here, and he ought not therefore to be deprived of any superior advantage which the law of this country may confer. He is to have the same rights which all the subjects of this kingdom are entitled to." 1 B. & P. 138. See also *Imlay v. Ellefsen*, 2 East, 453; *Brettillot v. Sandos*, 4 Scott 201. The cases of *Melan v. Duke de Fitzjames*, 1 Bos. & Pull. 138; *Talleyrand v. Boulanger*, 3 Ves. 447; and *Flack*

v. Holm, 1 J. & W. 405, 417, as to the point in question, may be considered as overruled. § 71.

The admission of evidence, and the weight to be attributed to it, depend upon the *lex fori*. *Evidence.* *Yates v. Thompson*, 3 C. & F. 544; *Bain v. Whitehaven, etc., Railway Company*, 3 H. L. Ca. 1; *Leroux v. Brown*, 12 C. B. 801; *Carrington v. Roots*, 2 M. & W. 248; *Reade v. Lamb*, 6 Exch. 130; *Crosby v. Wadsworth*, 6 East. 602; *Laythoarp v. Bryant*, 2 N. C. 755, 3 Scott 238. Mr. Justice Willes, however, takes exception to this principle in *Williams v. Wheeler*, 8 C. B. N. S. 316. "The general rule," said his lordship, "is that *locus regit actum*; and although I fully recognize the principle upon which the judgment of this Court in *Leroux v. Brown* professes to be founded, viz., that the procedure is regulated by the *lex fori*, I am not satisfied that either of the sections of the Statute of Frauds, to which reference has been made, warrants the decision. We must, however, act upon *Leroux v. Brown* until it is overruled by a Court of Error."

Set-off is treated in England as part of the remedy, but in countries like Quebec, where compensation takes place by mere operation of law, and extinguishes the debt, it should be regarded as affecting the contract; and it would seem that it can be set up in a foreign court by either the principal debtor or his sureties, the drawer and indorsers. So the Privy Council held in *Allen v. Kemble*, P. C., 6 Moore, 314. See Story, Conf. of Laws, § 575; and *Macfarlane v. Norris*, 2 B. & S. 783.

The limitation of actions clearly does not belong to and will not be determined by the law of the country where the contract was entered into, but the law of the country where the proceedings are taken to enforce it. *Don v. Lippmann*, H. L., 5 C. & F. 1; *Campbell v. Steiner*, 6 Dow. 116, 134; *Ferguson v. Fyffe*, 8 C. & F. 140; the *British Linen Company v. Drummond*, 10 B. & Cress. 903; *De la Vega v. Vianna*, 1 Born. & Ad. 284. This rule was followed in Ontario in *North v. Fisher*, 6 O. R. 206. But the Quebec Court of Appeals refused to recognize it and held in *Wilson v. Demers*, 14 L. C. J. 317, that where a note was made and payable in a foreign country by a person therein domiciled, who subsequently absconded to Canada, and whose

Statute of
limitations

§ 71. departure and whereabouts were unknown to the holder, Quebec prescription could not be set up, in accordance with the maxim *contra non valentem agere, non currit prescriptio*. The soundness of this decision is discussed in *La Revue Critique*, vol. 1, p. 125. It is unnecessary to review this controversy, as the decision in *Wilson v. Demers*, having been rendered upon a case previous to the Code, is now of no practical value. See *Hillsburg v. Meyer*, 18 L. C. J. 69; *Cross v. Snow*, 9 L. N. 196; *Lafaille v. Lafaille*, 14 R. L. 466. Articles 2190 and 2191 of the Quebec Civil Code have settled the point in the following terms:—

2190. "As regards moveable property and personal actions, even in matters of bills of exchange and promissory notes and commercial matters in general, one or more of the following prescriptions may be invoked:—

1. "Any prescription entirely acquired under a foreign law, when the cause of action did not arise or the debt was not stipulated to be paid in Lower Canada, and such prescription has been so acquired before the possessor or the debtor had his domicile therein;

2. "Any prescription entirely acquired in Lower Canada, reckoning from the date of the maturity of the obligation, when the cause of action arose or the debt was stipulated to be paid therein, or the debtor had his domicile therein at the time of such maturity, and in other cases from the time when the debtor or possessor becomes domiciled therein;

3. "Any prescription resulting from the lapse of successive periods in the cases of the two preceding paragraphs, when the first period elapsed under the foreign law.

2191. "Prescriptions commenced according to the law of Lower Canada are completed according to the same law, without prejudice to the right of invoking those acquired previously under a foreign law, or by a union of periods under both laws, conformably to the preceding article." See also articles 2260 and 2267.

No less than nine distinct propositions have been advocated in Europe by prominent jurists, on the subject of conflict of commercial prescriptions; and it is fortunate that the Quebec codifiers have been able to lay down definite principles, however different they may be from those so far advanced. The latter may be summed up as follows:—

1. The law of domicile of the creditor in all cases supported by Pothier and Dumoulin.

2. The law of domicile of the debtor at the time of the institution of the action in all cases, supported by John Voët, Pöhl, Thöl, Bar, Berroyer and Laurière on Duplessis, Merlin, Marcadé,

§ 71.

Arrêts of the Parlement de Flandre, 17th July, 1692, and 30th October, 1705; Bruxelles, 24th September, 1814; Cologne, 7th January, 1836, 4th April, 1839, and 14th December, 1840; Cass. Berlin, 8th October, 1833.

3. The law of the place of the contract in all cases, supported by Hert, Mansord, Rocco, Reinhardt, Schaffner, Demangeat; Douai, 16th August, 1834, Paris, 7th February, 1839; Algier, 18th August, 1848, and 18th January, 1840.

4. The law of the place of the contract, and when a place of payment is specified, the law of that place supported by Wachter, Koch, Brunnemann, Savigny, and Domin-Petrushevecz.

5. The law of the domicile of the debtor at the time of the institution of the action, and when a place of payment is specified, the law of that place, supported by Christin, Burgundus, Mantica, Casaregis, Favre, Boullenois, Troplong and Massé.

6. The law of the domicile of the debtor at the time of making the contract, and when a place of payment is specified, the law of that place, supported by Pardessus.

7. The law of the domicile of the debtor at the time of the making of the contract in all cases, supported by Dunod.

8. The law of the place where the action is brought, in all cases supported by Paul Voët, Hommel, Fœlix, Huber, Weber, Tittmann, Mayer, Glück, Mittermaier, Mühlenbruch de Linde, and by the English and American decisions.

9. In Scotland another system, still assented to by Guthrie on Savigny, prevailed in former times, viz., the law of the domicile of the debtor during the whole currency of the term of prescription.

A distinction, characterized by Lord Brougham, in *Don v. Lippmann*, as "excellent," and approved by Tindal, C. J., in *Huber v. Steiner*, 2 Bing. N. C. 211, has been made by Mr. Justice Story:—

"Suppose the statutes of limitation or prescription of a particular country do not only extinguish the right of action, but the claim or title itself *ipso facto*, and declare it a nullity after the lapse of the prescribed period, and the parties are resident within the jurisdiction during the whole of that period, so that it has actually and fully operated upon the case; under such circumstances the question might properly arise, whether such statutes of limitation or prescription may not afterwards be set up in any other country to which the parties may remove, by way of extinguishment, or transfer of the claim or title." Stor. Conf. of Laws, § 582.

§ 71.

This point was raised but not decided in the case of *Her Highness Buckmahoye v. Mottichund*, 8 Moore P. C. C. 4; 5 Moore In l. App. Cas. 234; but it seems that the rule laid down by Story was approved of in *Huber v. Steiner* and in *Harris v. Quine*. L. R., 4 Q. B. 653.

In the latter case, Lush J., said: "Had the Manse statute of limitations been analogous to our statute, 3 & 4 Wm. 4, c. 27, as to real property, and had extinguished the right after the limited time, and not merely barred the remedy there would have been good ground for defence in this court." L. R., 4 Q.B. 658. See *ante*, p. 219, n. 43.

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PART III.

CHEQUES ON A BANK.

72. A cheque is a bill of exchange drawn on a Cheque defined.
bank, payable on demand ;

(2) Except as otherwise provided in this part, Certain provisions to apply
the provisions of this Act applicable to a bill of
exchange payable on demand apply to a cheque.

73. Subject to the provisions of this Act :— Presentment of cheque for payment.

(a) Where a cheque is not presented for
payment within a reasonable time of its issue, and
the drawer or the person on whose account it is
drawn had the right at the time of such present-
ment, as between him and the bank, to have the
cheque paid, and suffers actual damage through
the delay, he is discharged to the extent of such
damage, that is to say, to the extent to which
such drawer or person is a creditor of such bank
to a larger amount than he would have been had
such cheque been paid ;

(b) In determining what is a reasonable time,
regard shall be had to the nature of the instru-
ment, the usage of trade and of banks, and the
facts of the particular case ;

(c) The holder of such cheque, as to which such
drawer or person is discharged, shall be a creditor,
in lieu of such drawer or person, of such bank to

§. 74. the extent of such discharge, and entitled to recover the amount from it.

Revocation of
bank's autho-
rity.

74. The duty and authority of a bank to pay a cheque drawn on it by its customer are terminated by :—

(a) Countermand of payment;

(b) Notice of the customer's death.

1. The indorser of a cheque will be discharged if the same be not presented the day after the indorsement. Notice of dishonor on that day is also necessary. *Lord v. Hunter*, 6 L. N. 310.

2. The respondent, having funds to his credit in a bank which had suspended payment, drew cheques on the bank for various sums. The cheques were accepted by the bank on the same day, and the respondent then, for valuable consideration, disposed of them to various parties who were paid their respective amounts by the bank, by credits or otherwise. It was *held* that the bank had no action against the respondent to recover the amounts of the cheques so paid, their recourse, if any, being against the parties to whom they had paid the money. *Exchange Bank of Canada & Hall*, M. L. R., 2 Q. B. 409.

3. The maker of a cheque is responsible on it until it is presented, and is not entitled to notice or other privileges, not even of presentation, unless it be shown that from want of such diligence he had suffered damage, as from the bank on which it is drawn having failed in the interim. *Pratt v. McDougall*, 12 L. C. J. 243, S. C. 1868; 2352 C. C.

4. When a cheque was made on the 30th of May, 1877, and was not presented till the 6th of June. Held, not unreasonable to require of the payee to show that the cheque would have been good at any time before the 6th of June. *Marler v. Stewart*, 1878, in Review; *Montreal Stephen's Dig.* 111, n. 60.

5. A cheque may be post dated, though in England it is prohibited by the Stamp Act. Where a cheque is payable on demand no days of grace are allowed; cheques must be presented on the day they are received, or the next day, otherwise the indorser is discharged. The want of due presentment, or of notice of dishonor to the drawer, is of no consequence, unless when the banker on whom it is drawn has become insolvent. *Wood v. Stephenson*, U. C., 16 Q. B. 419; *Owens v. Quebec Bank*, U. C., 30 Q. B. 382.

6. A bank has a right to charge to a customer's account bills due by him. *Jones v. The Bank of Montreal*, U. C., 29 Q. B. 448.

7. If a bank refuse to pay a cheque having sufficient funds of the drawer for the purpose, the holder can compel payment in equity. *Gore Bank v. Royal Canadian Bank*, 13 Chy. 425.

Cheque

A cheque, as defined by the Act, is a bill of exchange drawn on a chartered bank, payable on demand. In England, it is sufficient that it be drawn on a "banker," whether incorporated or not.

§ 74.

A cheque, therefore, payable at a future day is not a cheque within the meaning of the Act, but a bill of exchange, and should be treated as such.

All cheques are bills of exchange, but all bills of exchange are not cheques. Therefore, an authority to draw cheques does not necessarily include an authority to draw bills. *Forster v. Mackreth*, L. R., 2 Ex. 163.

A cheque is intended for prompt presentment, that is, within a reasonable time, sects. 45 and 74, and if indorsed should be presented for payment within a reasonable time after indorsement. The custom of banks and merchants and the jurisprudence have fixed this reasonable time to the day following the indorsement. Where the bank on whom the bill is drawn has its office in a place different from that in which it is drawn, it is customary to forward the bill not later than the day after it is received, and the agent to whom it is so forwarded must present it on the day after he receives it. *Bytes*, 14th ed., p. 22.

The drawer and indorser of a dishonored cheque are entitled to notice of dishonor as in the case of an inland bill of exchange, sec. 72.

A cheque is not intended to be accepted, but there is no objection to its acceptance. *Bytes*, 23.

Chalmers, p. 230, says that the provision contained in section 73 is new law. But in the Province of Quebec it seems to sanction an old jurisprudence based upon the law of France. In France the English law concerning cheques has been in greater part adopted by the "Loi du 23 mai 1865," as modified by the "Loi du 19 février 1874." See 4 *Alauzet*.

In the absence of special directions from the customer, it is the duty of the bank to pay the customer's cheques in the order in which they are presented. *Bytes*, 26.

Where a customer has an account at one branch, the other branches are not bound to honor his cheques.

In the case of a cheque, the bank is protected against the consequences of a forged indorsement, unless the drawer gives notice in writing of such forgery within one year after he has acquired notice of the same. Section 24.

When a customer accepts a bill of exchange payable at a bank, it is an authority to the bank to pay it. *Vagliano v. Bank of England*, 58 L. J. Q. B. 357.

§ 75.*Crossed Cheques.*

General crossing defined.

75. Where a cheque bears across its face an addition of:—

(a) The word “bank” between two parallel transverse lines, either with or without the words “not negotiable;” or

(b) Two parallel transverse lines simply, either with or without the words “not negotiable;”

That addition constitutes a crossing, and the cheque is crossed generally;

Special crossing.

(2) Where a cheque bears across its face an addition of the name of a bank, either with or without the words “not negotiable,” that addition constitutes a crossing, and the cheque is crossed specially and to that bank.

Sections 35 and 80.

The practice of crossing cheques was familiar to the London bankers long before it became a subject of legislation by British Parliament in 1856. In the case of *Bellamy v. Marjoribanks*, 7 Exch. 389, decided in 1852, the jury found that this practice was then “a custom and usage.” Parke, B., in this case said:—

“We are strongly inclined to think that on a full inquiry the usage will turn out to be no more than this, and, considering the custom in this point of view, the crossing is a mere memorandum on the face of the check, and forms no part of the instrument itself, and in no way alters its effect. There can be no doubt that such a usage is highly beneficial to the public. These instruments are in their essential character payable to bearer; they are in many respects treated as bank notes, for which “of late years they have been largely substituted; but like all other things they are liable to be mislaid, or lost, or stolen, and may get into the hands of persons who are not entitled to receive payment of them. It is manifestly, therefore, a great protection and safeguard to the real owner, that there should exist the means

of tracing and ascertaining for whose use the money paid on a check is received, and to whom the money actually goes; and the payment through a banker secures this object." § 75.

Baile Parke adds "that the practice of crossing cheques originated at the clearing-house, the clerks of the different bankers who did business there having been accustomed to write across the checks the names of their employers, so as to enable the clearing house clerks to make up the accounts."

The practice of crossing cheques has been adopted by every class of the mercantile community to guard against loss, larceny, or fraudulent negotiation by a clerk, employee or agent. C crossed
cheques.

The statute limits it to cheques on a chartered bank; but it is said that other bills of exchange payable in Great Britain are not unfrequently crossed in like manner. In such a case, the decision in *Bellamy v. Marjoribanks* and in *Carlton v. Ireland*, 25 L. J. Q. B. 113, and *Smith v. Union Bank*, 1 Q. B. D. 33, would be of interest. As held by Parke, B. at common law, "no prudent banker would pay a crossed check otherwise than to a banker, except he was fully satisfied as to the title of the party presenting it to receive payment. If he did so he would run the risk of the bearer of the check having no title to it." 7 Exch. 389. See also Byles, p. 28.

The decision in *Bellamy v. Marjoribanks* necessitated special legislation by Parliament, which was enacted by the 19 and 20 Vict., c. 25, in 1856. This is the first statute recognizing the "crossing" of cheques, and it was supplemented by the 21 and 22 Vict., c. 79 and 39 and 40 Vict., c. 81, known as the Crossed Checks Act, 1876. The Bills of Exchange Act reproduced the previous legislation with some slight modifications.

By section 94, the provisions of the Act apply to dividend warrants, and in England by a recent statute, 46 and 47 Vict., c. 55, s. 17, they are further applied to "any document issued by a customer of any banker, and intended to enable any person to obtain payment from such banker of the sum mentioned in such document." The latter provision has not been embodied in the Canadian Act.

In England, a cheque is a bill of exchange drawn on a banker; consequently the provisions of the Act as to crossed cheques apply to the cheques of all bankers, whether incorporated or not. In Canada, they apply only to cheques drawn on a chartered bank. See, 2, subs. (c), and secs. 72 and 75.

§ 75.

A cheque is crossed generally or in blank, by having across its face two parallel transverse lines as follows, either with or without the word "bank,"

and cannot be paid to any holder other than a chartered bank.

If the cheque be crossed specially, or in full, by designating a particular bank between the two transverse lines, it cannot be paid to any holder other than the particular bank designated.

In either case, the payment made to any other holder will be at the risk and peril of the bank so paying. Section 78.

The mere crossing of a cheque does not affect its negotiability, unless it is also crossed "not negotiable," and even with such words it is still transferable but with certain limits defined by section 80: "Where a person takes a crossed cheque which bears on it the words 'not negotiable,' he shall not have and shall not be capable of giving a better title to the cheque than that which had the person from whom he took it." In other words, a cheque crossed "not negotiable" is transferable to the extent of an overdue bill. Therefore, the crossing in full of a cheque "not negotiable" is the best mode of the guarding against risk from theft or loss and of securing the intended appropriation of the cheque. In England, printed forms of crossed cheques are in use. The following is an example of a cheque crossed in full, and "not negotiable."

No. 220
TO THE CASHIER OF
La Banque
Pay _____
One thousand _____
\$ 1000

The Bank of Montreal.
Not negotiable.

Montreal, 27th October, 1890.

que du Peuple
_____ or bearer
_____ Dollars.
Henry Jones.

A cheque may be crossed either by the drawer, or the payee, or any subsequent holder. See sections 2 (g) and 76.

A crossed cheque may be uncrossed by the drawer's writing between the transverse lines "Pay Cash," and initialing the same. Section 76, subs. 7. This sub-section is an addition to the English Act, based, however, upon what appears to be the jurisprudence prevailing in England. Chalmers, 238.

Randolph, § 1453, believes that the practice of crossing cheques has never obtained in the United States, and before the passing of the Bills of Exchange Act it was certainly unknown in Canada, although special provisions have been in force here for the punishment of the obliteration or alteration of "crossings" on cheques, ever since 1869. 32 and 33 Viet., c. 28; Ca. Rev. St., c. 165, s. 31. "An Act respecting forgery." See *infra*, section 77.

Owing to its advantages, the crossing of cheques has already been adopted by several financial houses.

76. A cheque may be crossed generally or specially by the drawer; Crossing by drawer or after issue.

(2) Where a cheque is uncrossed, the holder may cross it generally or specially; General or special.

(3) Where a cheque is crossed generally, the holder may cross it specially; May be varied.

(4) Where a cheque is crossed generally or specially, the holder may add the words "not negotiable;" Words may be added.

(5) Where a cheque is crossed specially, the bank to which it is crossed may again cross it specially to another bank for collection; Re-crossing for collection.

(6) Where an uncrossed cheque, or a cheque crossed generally, is sent to a bank for collection, it may cross it specially to itself; Crossing by bank.

(7) A crossed cheque may be reopened or uncrossed by the drawer writing between the transverse lines, and initialing the same, the words "pay cash." Uncrossing crossed cheque

77. A crossing authorized by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorized by this Act, to add to or alter the crossing Crossing is a material part of cheque.

See section 63.

§ 78.

Section 31 of the Revised Statutes of Canada, ch. 129, section 31, enacts: "Whenever any cheque or draft on any banker is crossed with the name of a banker, or with two transverse lines with the words 'and company,' or any abbreviation thereof, every one who, with intent to defraud, obliterates, adds to or alters any such crossing, or offers, utters, disposes of, or puts off any cheque or draft whereon any such obliteration, addition, or alteration has been made, knowing the same to have been made, is guilty of felony, and liable to imprisonment for life."

Duties of bank
as to crossed
cheques.

78. Where a cheque is crossed specially to more than one bank, except when crossed to another bank as agent for collection, the bank on which it is drawn shall refuse payment thereof;

Liability for
improper pay-
ment.

(2) Where the bank on which a cheque so crossed is drawn nevertheless pays the same, or pays a cheque crossed generally otherwise than to a bank, or, if crossed specially, otherwise than to the bank to which it is crossed, or to the bank acting as its agent for collection, it is liable to the true owner of the cheque for any loss he sustains owing to the cheque having been so paid;

When liability
does not ac-
crue.

Provided, that where a cheque is presented for payment which does not at the time of presentment appear to be crossed or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorized by this Act, the bank paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated, or having been added to or altered otherwise than as authorized by this Act, and

of payment having been made otherwise than § 79.
to a bank, or to the bank to which the cheque is
or was crossed, or to the bank acting as its agent
for collection, as the case may be.

79. Where the bank, on which a crossed cheque is drawn in good faith and without negligence, pays it, if crossed generally, to a bank, or, if crossed specially, to the bank to which it is crossed, or to a bank acting as its agent for collection, the bank paying the cheque; and if the cheque has come into the hands of the payee, the drawer shall respectively be entitled to the same rights, and be placed in the same position as if payment of the cheque had been made to the true owner thereof.

Protection to
bank and
drawer where
cheque is
crossed.

80. Where a person takes a crossed cheque which bears on it the words "not negotiable," he shall not have and shall not be capable of giving a better title to the cheque than that which had the person from whom he took it.

Effect of cross-
ing on holder.

Chalmers, p. 241, says:

"This reproduces the first part of sect. 12 of the Act of 1876. A cheque crossed 'not negotiable' is still transferable, but its negotiable quality is limited. It is put on a similar footing with an overdue bill. A holder who has a good title can still transfer it, and the transferee is entitled to receive payment; but where the title of the transferor is defective a subsequent holder for value is deprived of the protection ordinarily afforded to a holder in due course. Suppose a cheque payable to bearer and crossed 'not negotiable' is stolen. The thief gets a tradesman to cash it for him, and the tradesman gets the cheque paid on presentment through a banker. The banker who pays and the banker who receives the money for the tradesman are protected, but the tradesman would be liable to refund the money to the true owner, and, assuming payment of the cheque to have been stopped, he could not sue the drawer."

81. Where a bank, in good faith and without negligence, receives for a customer payment of a cheque crossed generally or specially to itself,

Protection to
collecting
a bank.

§ 81. and the customer has no title, or a defective title thereto, the bank shall not incur any liability to the true owner of the cheque by reason only of having received such payment.

Chalmers, p. 241 :

"This reproduces the proviso to sect. 12 of the Act of 1876. It was held in *Mathiessen v. London and County Bank*, that the proviso protected the collecting banker, whether the cheque was crossed with or without the words 'not negotiable,' for the proviso was to be construed as an independent section. *Mathiessen v. London and County Bank* (1879), 5 C. P. D. 7. The present Act, in affirmance of that decision, reproduces the proviso as an independent section.

"The fact that the cheque is indorsed by the customer 'per pro' may put the collecting banker on inquiry, and if the banker makes no inquiry it may be negligence within the meaning of the section." *Bissell v. Fox & Co.* (1884), 51 L. T. N. S. 663; affirmed with variation on another point, 53 L. T. N. S. 193, C. A.

PART IV.

PROMISSORY NOTES.

82. A promissory note is an unconditional Promissory note defined. promise in writing made by one person to another, signed by the maker, engaging to pay, on demand, or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person, or to bearer;

(2) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section, unless and until it is indorsed by the maker; Indorsement by maker.

(3) A note is not invalid by reason only that it contains also a pledge of collateral security Collateral pledge does not invalidate. with authority to sell or dispose thereof;

(4) A note which is, or on the face of it purports to be, both made and payable within Canada, is an inland note; any other note is a foreign note. Inland and foreign.

See sections 4, 51 and 71.

83. A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer. Delivery necessary.

See sections 20 and 21.

84. A promissory note may be made by two or more makers, and they may be liable thereon Joint and several notes.

§ 84. jointly, or jointly and severally, according to its tenor ;

As to number. (2) Where a note runs "I promise to pay," and is signed by two or more persons, it is deemed to be their joint and several note.

See section 38.

Note payable on demand.

85. Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement ; if it is not so presented, the indorser is discharged ; if, however, with the assent of the indorser, it has been delivered as a collateral or continuing security, it need not be presented for payment so long as it is held as such security ;

Reasonable time.

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case ;

Defects without notice.

(3) Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

See section 38.

Presentment of note for payment.

86. Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place. But the maker is not discharged by the omission to present the note for payment on the day that it matures. But if any suit or action is instituted thereon against him before presentation, the

costs thereof shall be in the discretion of the court. **§ 87.**

If no place of payment is specified in the body of the note, presentment for payment is not necessary in order to render the maker liable.

(2) Presentment for payment is necessary in ^{Liability.} order to render the indorser of a note liable;

(3) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

See section 52.

87. The maker of a promissory note, by making it:— ^{Liability of maker.}

(a) Engages that he will pay it according to its tenor;

(b) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

See sections 30 and 54.

88. Subject to the provisions in this part, and except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes; ^{Application of part II to notes.}

(2) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order; ^{Corresponding terms.}

§ 88.

What provisions do not apply.

(3) The following provisions as to bills do not apply to notes, namely, provisions relating to:—

- (a) Presentment for acceptance;
- (b) Acceptance
- (c) Acceptance *suprà* protest;
- (d) Bills in a set;

As to foreign note.

(4) Where a foreign note is dishonored, protest thereof is unnecessary, except for the preservation of the liabilities of indorsers.

The subject of promissory notes has been fully dealt with in the preceding sections relating to bills of exchange, and further explanation would be useless. Section 88 declares that, in applying the provisions of the act relating to bills of exchange, the maker of a note shall be deemed to correspond to the acceptor of a bill, and therefore the same rules apply to both. A distinction is, however, to be drawn from the fact that the maker is the creator of the note, whilst the contract of the acceptor is accessory. In consequence, the acceptance may be conditional, but the note, like the bill, must be unconditional. The provisions of the Act contained in section 52 concerning presentment against the acceptor are equally applicable to the maker of a note. In fact they have been reproduced in section 86.

PART V.

SUPPLEMENTARY.

A thing is deemed to be done in good faith Good faith. within the meaning of this Act, where it is in, fact done honestly, whether it is done negligently or not.

See ante, section 29 and notes.

90. Where, by this Act, any instrument or Signature. writing is required to be signed by any person it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority;

(2) In the case of a corporation, where, by As to corporations. this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing is duly sealed with the corporate seal; but nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.

See section 23.

91. Where, by this Act, the time limited for Computation of time. doing any act or thing is less than three days, in reckoning time, non-business days are excluded; "non-business days," for the purposes of this Act, mean the days mentioned in the fourteenth section of this Act; any other day is a business day.

See section 14.

§ 92.

When noting is
equivalent to
protest.

92. For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill or note has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.

See section 51.

Protest when
notary is not
accessible.

93. Where a dishonored bill is authorized or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonored, any justice of the peace resident in the place may present and protest such bill and give all necessary notices, and shall have all the necessary powers of a notary in respect thereto;

Expenses,

(2) The expense of noting and protesting any bill or note, and the postages thereby incurred, shall be allowed and paid to the holder in addition to any interest thereon;

Fees charge-
able.

(3) Notaries may charge the fees in each Province heretofore allowed them;

Forms.

(4) The forms in the first schedule to this Act may be used in noting or protesting any bill or note, and in giving notice thereof. A copy of the bill or note and indorsement may be included in the forms, or the original bill or note may be annexed, and the necessary changes in that behalf made in the forms;

Evidence of
presentation,
dishonor and
notice.

(5) A protest of any bill or note, and any copy thereof as copied by the notary or justice of

the peace, shall in any action be *primâ facie* evidence of presentation and dishonor, and also of service of notice of such presentation and dishonor, as stated in such protest. § 94.

94. The provisions of this Act as to crossed Dividend warrants may be crossed. cheques shall apply to a warrant for payment of dividend.

95. The enactments mentioned in the second Repeal. schedule to this Act are hereby repealed, as from the commencement of this Act to the extent in that schedule mentioned:—

Provided, that such repeal shall not affect Proviso. anything done or suffered, or any right, title or interest acquired or accrued before the commencement of this Act, or any legal proceeding or remedy in respect of any such thing, right, title or interest;

(2) Nothing in this Act or in any repeal "The Bank Act," not affected. effected thereby shall affect the provisions of "The Bank Act ;"

(3) The Act of the Parliament of Great Britain Imperial Acts 15 Geo. III, c. 51, and 17 Geo. III, c. 30, not to apply. passed in the fifteenth year of the reign of His late Majesty George III, intituled "An Act to restrain the negotiation of Promissory Notes and Inland Bills of Exchange, under a limited sum within that part of Great Britain called England," and the Act of the said Parliament passed in the seventeenth year of His said Majesty's reign, intituled "An act for further restraining the negotiation of Promissory Notes and Inland Bills of Exchange under a limited sum, within that part of Great Britain called England," shall not extend to

§ 95. or be in force in any Province of Canada, nor shall the said Acts make void any bills, notes, drafts or orders which have been or may be made or uttered therein.

Construction
and effect of
Act.

It may be a question whether, under the provisions of this section, it is necessary, in the Province of Quebec at least, to protest and give notice of protest to the guarantor or *donneur d'aval* of the maker of a note signed before the first of September, but maturing thereafter. It may be asked also, whether notice of protest of bills made before, but maturing after the Act, should be served as provided by the latter or within the three days allowed by the Civil Code. Likewise, in such a case, can the protest be made at any time in the afternoon of the last day of grace, or only after three o'clock, as provided by the Act. All these questions are not without some difficulty, especially as to the protest and notice of protest to the *donneur d'aval*. Section 95 declares that the repeal of the old laws "shall not affect anything done or suffered, or any right, title, or interest acquired or accrued before the commencement of this Act, or any legal proceeding or remedy in respect of any such thing, right, title or interest."

It would seem that under this proviso, the *donneur d'aval*, in the case supposed, is not entitled to any protest, nor notice of protest; but it may be argued that protest, as well as notice of protest, are matters of procedure only, and that the provisions of the Act with respect to the same apply to all bills and notes maturing since the date of its coming into force. Endlich on Statutes, 386.

A rather similar question arose in France in 1810, after days of grace had been abolished by the Code de Commerce. It was held by the court of Bordeaux that days of grace relate to procedure only. The plaintiff went to appeal, arguing that contracts made before the new law, both as to form and effect, should be regulated by the old law; but the Court of Appeals rejected this pretension and confirmed the judgment of the court below, holding that, as the bill had been protested not on the day of maturity therein expressed, but after, within the delay of grace, the indorsers were discharged. Bordeaux, 11th January, 1810, S. 11,

2, 24. It is therefore better, in all cases, although by no means § 96.
clear, that all bills maturing after the first of September, 1890,
should be protested in the manner provided by the Act.

96. When any act or document refers to any ^{Construction}
enactment repealed by this Act, the act or docu- ^{with other}
ment shall be construed and shall operate as if ^{Acts, &c.}
it referred to the corresponding provisions of this
Act.

97. This Act shall come into force on the first ^{Commence-}
day of September next. ^{ment of Act.}

FIRST SCHEDULE.

FORM A.

NOTING FOR NON-ACCEPTANCE.

(Copy of Bill and Indorsements.)

On the 18 , the above bill was, by me, at the request of , presented for acceptance to E. F., the drawee, personally (*or*, at his residence, office or usual place of business), in the city (town *or* village) of and I received for answer, " . The said bill is therefore noted for non-acceptance.

A. B.,

Notary Public.

(Date and place.)

18

Due notice of the above was by me served upon
 { A. B., } the { drawer, } personally, on the
 { C. D., } { Indorser, }
 day of _____, (or, at his residence, office or usual place
 of business) in _____, on the _____ day of _____
 (or, by depositing such notice, directed to
 him, at _____, in Her Majesty's post office in the
 city (town or village), on the _____ day of _____,
 and prepaying the postage thereon.)

A. B.,

Notary Public.

(Date and place.)

18 .

FORM B.

PROTEST FOR NON-ACCEPTANCE OR FOR NON-PAYMENT
OF A BILL PAYABLE GENERALLY.*(Copy of Bill and Indorsements.)*

On this day of , in the year
18 , I, A. B., notary public for the Province of ,
dwelling at , in the Province of , at the
request of , did exhibit the original bill of
exchange, whereof a true copy is above written, unto
E. F., the { drawee } thereof personally (or, at his resi-
 { acceptor } dence, office or usual place of business) in , and,
speaking to himself (or his wife, his clerk or his servant,
&c.,) did demand { acceptance } thereof; unto which
 { payment } demand { he } answered: "
 { she } ."

Wherefore I, the said notary, at the request aforesaid,
have protested, and by these presents do protest against
the acceptor, drawer and indorsers (or drawer and indor-
sers) of the said bill, and other parties thereto or therein
concerned, for all exchange, re-exchange, and all costs,
damages and interest, present and to come, for want of
{ acceptance } of the said bill.
{ payment }

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,

Notary Public.

FORM C.

PROTEST FOR NON-ACCEPTANCE OR FOR NON-PAYMENT OF
A BILL PAYABLE AT A STATED PLACE.*(Copy of Bill and Indorsements.)*

On this day of , in the year
18 , I, A. B., notary public for the Province of

dwelling at _____, in the Province of _____,
at the request of _____; did exhibit the original
bill of exchange, whereof a true copy is above written,
unto E. F., the { drawee } thereof, at _____
 { acceptor }
being the stated place where the said bill is payable
and there, speaking to _____ did
demand { acceptance } of the said bill; unto which
 { payment }
demand he answered: “_____.”

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the acceptor, drawer and indorsers (or drawer and indorsers) of the said bill, and all other parties thereto or therein concerned, for all exchange, re-exchange, costs, damages and interest, present and to come, for want of { acceptance } of the said bill.
{ payment }

All of which I attest by my signature.

(Protested in duplicate.)

A.B.,

Notary Public.

FORM D.

PROTEST FOR NON-PAYMENT OF A BILL NOTED, BUT NOT
PROTESTED FOR NON-ACCEPTANCE.

If the protest is made by the same notary who noted the bill, it should immediately follow the act of noting and memorandum of service thereof, and begin with the words "and afterwards on, &c.," continuing as in the last preceding form, but introducing between the words "did" and "exhibit," the word "written" and "unto," the words: "and which bill was by me duly noted for non-acceptance on the day of

But if the protest is not made by the same notary, then it should follow a copy of the original bill and indorsements and noting marked on the bill—and then in the protest introduce, in a parenthesis, between the words

"written" and "unto," the words: "and which bill was on the day of , by , notary public for the Province of , noted for non-acceptance, as appears by his note thereof marked on the said bill."

FORM E.

PROTEST FOR NON-PAYMENT OF A NOTE
PAYABLE GENERALLY.

(Copy of Note and Indorsements.)

On this day of , in the year 18 , I. A.B., notary public for the province of , dwelling at , in the Province of , at the request of , did exhibit the original promissory note, whereof a true copy is above written, unto , the promisor, personally (or, at his residence, office or usual place of business), in , and speaking to himself (or his wife, his clerk or his servant, &c.), did demand payment thereof; unto which demand { he } answered: " " { she }

Wherefore, I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the promisor and indorsers of the said note, and all other parties thereto or therein concerned, for all costs, damages and interest, present and to come, for want of payment of the said note.

All of which I attest by my signature.

(Protested in duplicate.)

A.B.,
Notary Public.

FORM F.

PROTEST FOR NON-PAYMENT OF A NOTE PAYABLE
AT A STATED PLACE.*(Copy of Note and Indorsements.)*

On this day , in the year
18 , I, A. B., notary public for the Province of ,
dwelling at , in the Province of ,
at the request of , did exhibit the
original promissory note, whereof a true copy is above
written, unto the promisor, at
 , being the stated place where the said note is
payable, and there, speaking to did de-
mand payment of the said note, unto which demand he
answered: " ."

Wherefore I, the said notary, at the request aforesaid,
have protested, and by these presents do protest against
the promisor and indorsers, of the said note, and all
other parties thereto or therein concerned, for all costs,
damages and interest, present and to come, for want of
payment of the said note.

All which I attest by my signature.

(Protested in duplicate.)

A. B.,
Notary Public.

FORM G.

NOTARIAL NOTICE OF A NOTING, OR OF A PROTEST FOR
NON-ACCEPTANCE OR OF A PROTEST FOR NON-PAYMENT
OF A BILL.*(Place and date of Noting or of Protest.)*

1st.

To P. Q. (*the drawer*)

at

Sir,

Your bill of exchange for \$, dated at
the , upon E. F., in favor of C. D., payable

FORMS.

request of days after { sight, date } was this day, at the
 { non-acceptance. }
 { non-payment. } duly { noted protested } by me for

A. B.,
Notary Public.

(Place and date of Noting or of Protest.)

2nd.
 To C. D. (indorser),
 (or F. G.)

at Sir,
 Mr. P. Q.'s bill of exchange for \$, dated at
 , the , upon E. F., in your favor (or in
 favor of C. D.) payable days after { sight, date }
 and by you indorsed, was this day, at the request of,
 , duly { noted protested } by me for
 { non-acceptance. }
 { non-payment. }

A. B.,
Notary Public.

FORM H.

NOTARIAL NOTICE OF PROTEST FOR NON-PAYMENT OF A NOTE.

(Place and date of Protest.)

To
 at
 Sir,
 Mr. P. Q.'s promissory note for \$, date at
 , the , payable { days months } after date to
 { you } or order, and indorsed by you, was this day,
 { E. F. }

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the district (or county, &c.) of _____, in the Province
of _____, dwelling at (or near) the village of _____
in the said district, there being no
practising notary public at or near the said village
(or any other legal cause), did, at the request of _____
and in the presence of _____

well known unto me, exhibit
the original { bill } whereof a true copy is above
 { note }
written unto P. Q., the { drawer } thereof, personally
 { acceptor }
 { promisor }
(or at his residence, office or usual place of business) in
_____, and speaking to himself (his wife, his
clerk or his servant, &c.), did demand { acceptance }
 { payment }
thereof, unto which demand { he } answered: "
 { she }

Wherefore I, the said justice of the peace, at the request
aforesaid, have protested, and by these presents do protest
against the { drawer and indorsers } of the
 { promisor and indorsers }
 { acceptor, drawer and indorsers }
said { bill } and all other parties thereto and therein
 { note }
concerned, for all exchange, re-exchange, and all costs,
damages and interest, present and to come, for want of
{ acceptance } of the said { bill. }
{ payment } { note. }

All which is by these presents attested by the signa-
ture of the said (the witness) and by my hand and seal.

(Protected in duplicate.)

(Signature of the witness.)

(Signature and seal of the J. P.)

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SECOND SCHEDULE.

ENACTMENTS REPEALED.

Province and Chapter.	Title of Act and extent of repeal.
Dominion of Canada: Chap. 123, Revised Statutes	An Act respecting Bills of Exchange and Promissory Notes.—The whole Act.
Province of Quebec: Civil Code of Lower Canada.....	Articles 2,279 to 2,354, both inclusive [*].
Nova Scotia: Revised Statutes, third series, chap. 82	"Of Bills of Exchange and Promissory Notes." Section 2. The other sections of this chapter have been heretofore repealed.
New Brunswick: Revised Statutes, chap. 116.....	"Of Bills, Notes and Choses in Action." Section 2. The other sections of this chapter have been heretofore repealed.
30 Vic., 1867, chap. 34.....	An Act to amend chapter 116 of the Revised Statutes, "Of Bills, Notes and Choses in Action;" also Act 12th Victoria, chapter 39, relating thereto. Section 1.

[*Except in so far as such articles, or any of them, relate to evidence in regard to bills of exchange, cheques and promissory notes.]

Promissory

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APPENDIX.

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53 VICTORIA, CHAP. 33.

Acte concernant les lettres de change, chèques et billets promissoires.*

[Sanctionné le 16 mai 1890.]

SA Majesté, par et avec l'avis et le consentement du Sénat et de la Chambre des Communes du Canada, décrète ce qui suit :—

PREMIÈRE PARTIE.

DISPOSITIONS PRÉLIMINAIRES.

1. Le présent Acte peut être cité sous le titre : *Acte* Titre abrégé.
des Lettres de change, 1890.

* Dans le cas de différence entre les deux textes de la présente loi, il faut toujours rechercher l'intention du législateur, C. C. art. 2615 ; et comme cette loi a été empruntée à la Grande-Bretagne, conçue et rédigée dans la langue anglaise, le texte anglais, dans le doute, devra l'emporter.

Il est regrettable que de vieilles expressions françaises consacrées par l'usage ici et en France aient été remplacées, dans la traduction, par d'autres qui ne rendent pas mieux la pensée du législateur.

Ainsi, le "holder" devient le "détenteur," au lieu du "porteur."

"Holder in due course" est traduit par "détenteur régulier," au lieu de "tiers porteur de bonne foi," ou encore "porteur régulier" ou "porteur parfait."

"Holder for value," est le "détenteur contre valeur," au lieu de "porteur pour valeur."

"Bill on demand," n'est plus "la lettre à demande," mais "la lettre sur demande."

"Simple contract" est traduit par "simple contrat," au lieu de "obligation ordinaire."

"Valuable consideration" est "la cause de valeur," au lieu de "cause valable," ou "valeur fournie," ou simplement "valeur."

"Accommodation bill" est "la lettre de complaisance," au lieu de "la lettre d'accommodement."

"General duties of the holder" est traduit par "obligations générales du détenteur," au lieu de "devoirs du porteur."

La traduction française de la loi anglaise de 1852 par M. Barclay est meilleure, sans cependant être parfaite. Ainsi, il traduit "promissory note" par "billet de change," au lieu de billet à ordre, ou encore mieux "billet promissoire," puisque "l'ordre" n'est pas essentiel.

- Définitions. **2.** Dans le présent Acte, à moins que le contexte n'exige une interprétation différente,—
- "Acceptation." (a.) "Acceptation" signifie une acceptation complétée par la livraison ou la notification ;
- "Action." (b.) "Action" comprend la demande reconventionnelle et la compensation ;
- "Banque." (c.) "Banque" signifie une banque ou une caisse d'épargne constituée en corporation et faisant des opérations en Canada ;
- "Défense." (d.) "Défense" comprend la demande reconventionnelle ;
- "Détenteur." (e.) "Détenteur" signifie le preneur ou le bénéficiaire par endossement, d'une lettre de change ou d'un billet dont il est en possession, ou le porteur de la lettre ou du billet ;
- "Emission." (f.) "Emission" signifie la première livraison d'une lettre de change ou d'un billet, parfait sous le rapport de la forme, à une personne qui l'accepte comme détenteur ;
- "Endossement." (g.) "Endossement" signifie un endossement complété par la livraison de l'effet ;
- "Lettre" et "billet." (h.) "Lettre" signifie lettre de change, et "billet" signifie billet promissoire ;
- "Livraison." (i.) "Livraison" signifie transmission de possession, réelle ou fictive, d'une personne à une autre ;
- "Porteur." (j.) "Porteur" signifie la personne qui est en possession d'une lettre de change ou d'un billet promissoire payable au porteur ;
- "Valeur." (k.) "Valeur" signifie considération ou cause de valeur.

DEUXIÈME PARTIE.

LETTRES DE CHANGE.

De la forme et de l'interprétation.

- 3.** Une lettre de change est un ordre pur et simple donné par écrit, adressé par une personne à une autre, signé de celle qui le donne, mandant à celle à qui il est adressé de payer sur demande, ou à une époque déterminée ou susceptible de l'être, une somme de deniers précise à une personne ou à l'ordre d'une personne désignée, ou au porteur.

2. Tout écrit qui ne remplit pas ces conditions, ou qui mande de faire quelque chose en sus du paiement de deniers, n'est pas, sauf ainsi que ci-après prévu, une lettre de change.

Quand un effet n'est pas une lettre.

3. Un ordre de payer sur des fonds particuliers n'est pas pur et simple dans le sens du présent article ; mais un ordre de payer, sans restrictions, accompagné (a) de l'indication de fonds particuliers sur lesquels le tiré devra se rembourser, ou un compte particulier dont il devra débiter la somme, ou (b) d'un énoncé de la transaction qui a donné lieu à la lettre de change, est pur et simple.

Ordre pur et simple défini.

4. Une lettre de change n'est pas invalide à raison de ce qu'elle—

Lettre pas invalide pour les raisons spécifiées.

(a.) N'est pas datée ;

(b.) Ne spécifie pas la valeur donnée, ou que valeur a été donnée en échange ;

(c.) Ne spécifie pas le lieu d'où elle est tirée ou celui où elle est payable.

4. Une lettre de change intérieure est une lettre qui est ou qui paraît, à sa face même, (a) être tirée et payable en Canada, ou (b) être tirée en Canada sur une personne qui y est domiciliée. Toute autre lettre de change est étrangère.

Lettres intérieures et étrangères.

2. A moins que le contraire ne soit exprimé sur la lettre de change même, le détenteur peut la considérer comme lettre intérieure.

Si elle ne paraît pas être étrangère.

5. Une lettre de change peut être faite payable au tireur lui-même ou à son ordre ; ou elle peut être faite payable au tiré ou à son ordre.

Comment une lettre peut être tirée.

2. Lorsque, dans une lettre de change, le tireur et le tiré sont une seule et même personne, ou lorsque le tiré est une personne fictive ou inhabile à contracter, le détenteur peut, à son choix, considérer l'effet comme lettre de change ou comme billet à ordre.

Choix du porteur si le tireur est aussi le tiré.

6. Le tiré doit être nommé ou autrement désigné, dans une lettre de change, avec une précision raisonnable.

Le tiré doit être nommé.

2. Une lettre de change peut être adressée à deux tirés ou plus, qu'ils soient en société ou non ; mais une lettre adressée d'une manière alternative à deux tirés, ou à deux tirés ou plus successivement, n'est pas une lettre de change.

Si il y en a plus d'un.

Le preneur
doit être
clairement
désigné.

7. Lorsqu'une lettre de change n'est pas payable au porteur, le preneur doit y être nommé ou autrement désigné avec une précision raisonnable.

Si la lettre est
payable à
deux personnes
ou à un fonc-
tionnaire.

2. Une lettre de change peut être faite en faveur de deux preneurs ou plus conjointement, ou elle peut être faite payable à l'un des deux comme alternative, ou à l'un ou quelques-uns des différents bénéficiaires. Une lettre de change peut aussi être faite payable au titulaire d'une charge ou d'un emploi alors en exercice.

Si le preneur
est fictif.

3. Lorsque le preneur est une personne fictive ou qui n'existe pas, la lettre de change peut être considérée comme payable au porteur.

Certaines
lettres sont
valables
mais non
négociables.

8. Lorsqu'une lettre de change contient des mots qui en interdisent le transfert, ou qui indiquent l'intention de la rendre non transmissible, elle est valable entre les parties qui y sont concernées, mais n'est pas négociable.

Payables à
ordre ou au
porteur.

2. Une lettre de change négociable peut être payable à ordre ou au porteur.

Au porteur.

3. Une lettre de change est payable au porteur lorsqu'elle exprime qu'elle est ainsi payable, ou lorsque l'unique ou dernier endossement qu'elle porte est un endossement en blanc.

A ordre.

4. Une lettre de change est payable à ordre lorsqu'elle exprime ce mode de paiement, ou lorsqu'elle exprime qu'elle est payable à une personne désignée et ne contient rien qui en interdise le transfert ou qui indique l'intention de la rendre non transmissible.

Choix du
porteur.

5. Lorsqu'une lettre de change, soit à l'origine, soit par endossement, exprime qu'elle est payable à l'ordre d'une personne désignée, et non pas à elle ou à son ordre, elle est néanmoins payable à cette personne ou à son ordre, à son choix.

Somme
payable.

9. La somme payable sur lettre de change est une somme précise suivant l'intention du présent acte, bien qu'elle prescrive que le paiement doive s'en faire—

(a.) Avec intérêt;

(b.) Par versements indiqués;

(c.) Par versements indiqués, avec stipulation qu'à défaut de paiement de quelque versement la somme totale deviendra exigible;

(d.) D'après un taux de change indiqué, ou d'après un taux de change à constater selon que le prescrit la lettre de change.

2. Lorsque la somme à payer est exprimée en toutes lettres et aussi en chiffres, et qu'il y a désaccord entre les deux, la somme à payer est celle qui est écrite en toutes lettres. Divergence entre les chiffres et les mots.

3. Si une lettre de change exprime qu'elle est payable avec intérêt, l'intérêt court, à moins que l'effet ne prescrive le contraire, depuis la date de la lettre, et si elle ne porte pas de date, il court à compter de son émission. Intérêt.

10. Une lettre de change est payable sur demande, — Lettre payable sur demande.

(a.) Si elle exprime qu'elle est payable sur demande ou sur présentation ; ou—

(b.) Si elle n'indique aucune date de paiement.

2. Lorsqu'une lettre de change est acceptée ou endossée après son échéance, elle est considérée, à l'égard de l'accepteur qui l'accepte ou de l'endosseur qui l'endosse dans de telles conditions, comme payable sur demande. Acceptation, etc., après échéance.

11. Une lettre de change est payable à une époque susceptible d'être déterminée, suivant l'intention du présent acte, si elle exprime qu'elle est payable— Lettre payable à terme.

(a.) A une époque fixe après date ou vue ;

(b.) Ou lors de la réalisation ou à une époque fixe après la réalisation d'une éventualité qui doit certainement se produire, bien que l'époque de sa réalisation soit incertaine.

2. Un effet dont le paiement dépend d'une éventualité incertaine n'est pas une lettre de change, et la réalisation de cette éventualité n'en change pas la nature. Quant aux éventualités.

12. Lorsqu'une lettre de change exprime qu'elle est payable à une époque fixe après date et est émise sans être datée, ou lorsque l'acceptation d'une lettre de change payable à une époque fixe après vue n'est pas datée, tout détenteur peut y insérer la véritable date de son émission ou de son acceptation, et la lettre est payable en conséquence. Omission de la date.

Néanmoins, (a) si le détenteur y insère, de bonne foi par méprise, une date erronée, et (b) dans tous les cas où une date erronée y est insérée, si l'effet passe ensuite entre les mains d'un détenteur régulier, la lettre de Date erronée.

change ne devient pas invalide pour cette cause, mais elle conserve son effet et est payable tout comme si la date insérée avait été sa véritable date.

La date fait foi
primâ facie.

13. Lorsqu'une lettre de change, ou une acceptation, ou quelque endossement, sont datés, la date, à moins de preuve contraire, est considérée comme étant la vraie date de la lettre, de l'acceptation ou de l'endossement, selon le cas :

Certaines dates
ne l'invalident
pas.

2. Une lettre de change n'est pas invalide pour la seule raison qu'elle est antidatée ou postdatée, ou qu'elle porte la date d'un dimanche ou de tout autre jour non juridique.

Calcul du
délai de paie-
ment.

14. Lorsqu'une lettre de change n'est pas payable sur demande, le jour de son échéance est déterminé comme il suit :—

Jours de grâce.

(a.) Trois jours, appelés jours de grâce, sont, chaque fois que la lettre n'en prescrit pas autrement, ajoutés à l'époque du paiement telle que fixée par la lettre, et elle devient due et est payable le dernier jour de grâce : néanmoins,—

Jours non
juridiques.

1. Si le dernier jour de grâce tombe un jour de fête légale ou non juridique dans la province où la lettre de change est payable, le jour suivant qui n'est pas un jour de fête légale ou non juridique dans cette province devient le dernier jour de grâce.

Quels sont ces
jours.

2. Pour tout ce qui se rattache aux lettres de change, les jours suivants, et nuls autres, seront observés comme jours de fête légale ou jours non juridiques, savoir :—

Dans toutes
les provinces
excepté
Québec.

(a.) Dans toutes les provinces du Canada, à l'exception de la province de Québec,—

Les dimanches ;
Le jour de l'An ;
Le Vendredi Saint ;
Le lundi de Pâques ;
Le jour de Noël ;

Le jour anniversaire (ou jour fixé par proclamation pour la célébration du jour anniversaire) de la naissance du souverain régnant, et si ce jour anniversaire tombe un dimanche, alors le lendemain ;

Le premier jour de juillet (anniversaire de la Confédération), et si ce jour tombe un dimanche, alors le deuxième jour de juillet comme étant ce jour de fête ;

Tout jour désigné par proclamation comme jour de fête publique ou comme jour de jeûne général, ou comme jour d'actions de grâce pour tout le Canada; et le jour suivant immédiatement le jour de l'An et le jour de Noël lorsque ces jours tombent respectivement le dimanche.

(b.) Et dans la province de Québec, les jours susdits, et Dans Québec. aussi—

L'Épiphanie;
L'Annonciation;
L'Ascension;
La Fête-Dieu;
La fête de saint Pierre et saint Paul;
La Toussaint;
La Conception.

(c.) Et aussi, dans chacune des provinces du Canada, Dans toutes les provinces. tout jour désigné par proclamation du lieutenant-gouverneur de cette province comme jour de fête publique, ou de jeûne, ou d'actions de grâce dans la province, ou tout jour non juridique en vertu d'un statut de cette province.

3. Lorsqu'une lettre de change est payable à vue ou à une époque fixe après date, après vue, ou après la réalisation d'une éventualité spécifiée, l'époque du paiement est déterminée en retranchant le jour à compter duquel le temps doit commencer à courir et en comprenant le jour du paiement. Jours à compter dans les délais.

4. Lorsqu'une lettre de change est payable à vue ou à une époque fixe après vue, le temps commence à courir depuis la date de l'acceptation si la lettre de change a été acceptée, et depuis la date de la note ou du protêt si elle a été notée ou protestée faute d'acceptation ou faute d'être remise au porteur. Quand le délai commence à courir.

5. L'expression "mois," dans une lettre de change, "Mois," signifie un mois de calendrier.

6. Toute lettre de change payable à un ou plusieurs mois de date devient due le même quantième du mois durant lequel elle est payable que celui dont elle est datée—à moins qu'il n'y ait pas de quantième identique dans le mois durant lequel elle est payable, auquel cas elle échoit le dernier jour de ce mois, avec addition, dans tous les cas, des jours de grâce. Quantième.

15. Le tireur d'une lettre de change, de même que tout endosseur, peut y insérer le nom d'une personne à Tiré au besoin.

qui le détenteur peut avoir recours au besoin, c'est-à-dire dans le cas où la lettre de change ne serait pas acceptée ou payée. Cette personne est appelée le "tiré au besoin." Le détenteur est libre de s'adresser ou non au tiré au besoin, selon qu'il le juge à propos.

Stipulations
facultatives
par le tireur
ou endosseur.

16. Le tireur d'une lettre de change, de même que tout endosseur, peut y insérer une stipulation expresse—

(a.) Dégageant ou restreignant sa propre responsabilité envers le détenteur ;

(b.) Libérant le porteur de quelque une ou de toutes ses obligations envers lui.

Définition de
l'acceptation.

17. L'acceptation d'une lettre de change est la signification par le tiré de son assentiment à l'ordre du tireur.

Formalités de
l'acceptation.

2. Une acceptation est nulle à moins qu'elle ne remplisse les conditions suivantes, savoir :—

(a.) Elle doit être écrite sur la lettre de change et signée du tiré. La simple signature du tiré, sans addition d'autres mots, est suffisante ;

(b.) Elle ne doit pas exprimer que le tiré pourra exécuter son engagement autrement que par le paiement de deniers.

3. Si dans une lettre de change, le tiré est erronément désigné, ou si son nom est mal orthographié, il peut accepter la lettre de change sous la désignation qu'elle contient, en ajoutant, s'il le désire, sa vraie signature, ou il peut l'accepter sous sa vraie signature.

Temps de
l'acceptation.

18. Une lettre de change peut être acceptée :—

(a.) Avant d'avoir été signée par le tireur, ou pendant qu'elle est imparfaite d'ailleurs ;

(b.) Après son échéance, ou après un premier refus d'acceptation ou de paiement.

Date de l'ac-
ceptation
après refus.

2. Lorsque le tiré, après avoir refusé d'accepter une lettre de change payable après vue, l'accepte ensuite, le détenteur, en l'absence de convention différente, a le droit d'en faire dater l'acceptation du jour de sa première présentation au tiré pour son acceptation.

Acceptation
générale et
restreinte.

19. Une acceptation est (a) générale ou (b) restreinte. Une acceptation générale est un consentement pur et simple à l'ordre du tireur ; une acceptation restreinte en termes formels modifie l'effet de la rédaction primitive de la lettre de change.

2. Particulièrement, une acceptation est restreinte si elle est—

Acceptation restreinte.

(a.) Conditionnelle, c'est-à-dire, si elle fait dépendre son paiement par l'accepteur de l'accomplissement d'une condition y insérée ; mais une acceptation de payer à un endroit spécialement désigné n'est pas conditionnelle ou restreinte.

(b.) Partielle, c'est-à-dire, une acceptation de ne payer qu'une partie de la somme pour laquelle la lettre est tirée ;

(c.) Restreinte quant au temps ;

(d.) L'acceptation de l'un ou de plusieurs des tirés, mais non de tous.

20. Lorsqu'une simple signature sur un papier blanc est remise par le signataire afin qu'elle puisse être convertie en lettre de change, elle comporte l'autorisation *primâ facie* de remplir ce papier comme lettre de change parfaite pour une somme quelconque, en se servant de cette signature comme étant celle du tireur, de l'accepteur ou d'un endosseur ; et, de la même manière, si une lettre de change est incomplète sous quelque rapport essentiel, celui qui en a possession est *primâ facie* autorisé à suppléer à ce qui lui manque de la manière qu'il juge à propos.

Effets signés en blanc.

2. Pour que le paiement d'une pareille lettre de change puisse, après qu'elle a été complétée, être exigible contre une personne qui y est devenue partie avant qu'elle ne fût complète, il faut qu'elle ait été remplie dans un délai raisonnable et d'une manière strictement conforme à l'autorisation donnée ; le délai raisonnable à cet effet est une question de fait.

Quand ils doivent être remplis.

Mais si un pareil effet, après avoir été complété, est négocié à un détenteur régulier, il devient valable et effectif à toutes fins entre ses mains, et il peut en exiger le montant comme si l'effet eût été rempli dans un délai raisonnable et d'une manière strictement conforme à l'autorisation donnée.

Droit du détenteur subséquent.

21. Tout contrat inséré sur une lettre de change, que ce soit celui du tireur, de l'accepteur ou de l'endosseur, est imparfait et révocable jusqu'à la livraison de la lettre en vue de lui donner effet.

Contrat incomplet jusqu'à livraison.

Mais si une acceptation est écrite sur une lettre de change, et si le tiré notifie la personne ou suivant les

Exception.

instructions de la personne qui a droit à la lettre, qu'il l'a acceptée, l'acceptation devient alors parfaite et irrévocable.

Formalités de la livraison.

2. Entre les parties immédiates, et envers un tiers autre qu'un détenteur régulier, la livraison—

(a.) Pour produire son effet, doit être faite par le tireur, l'accepteur ou l'endosseur, selon le cas, ou par leur autorisation ;

(b.) Peut être prouvée n'avoir été que conditionnelle ou faite dans un but spécial seulement, et non pas dans le but de transférer la propriété de la lettre.

Quand livraison valable est présumée.

Mais si la lettre est entre les mains d'un détenteur régulier, une livraison valable de la lettre par toutes les parties antérieures à lui, de façon à les lier envers lui, se présume incontestablement.

Preuve présumptive.

3. Lorsqu'une lettre de change n'est plus entre les mains d'une personne qui l'a signée comme tireur, accepteur ou endosseur, une livraison valable et absolue de sa part est présumée jusqu'à preuve contraire.

Capacité et autorisation des parties.

Capacité de parties.

22. La capacité de s'engager comme partie à une lettre de change est corrélatrice à la capacité de contracter.

Quant aux corporations.

Toutefois, rien dans le présent article n'autorise une corporation à s'engager comme tireur, accepteur ou endosseur d'une lettre de change, à moins qu'elle ne soit compétente à le faire en vertu de la loi alors en vigueur au sujet de cette corporation.

Lettre tirée ou endossée par un incapable.

2. Lorsqu'une lettre de change est tirée ou endossée par un mineur ou une corporation qui n'a pas la capacité ou le pouvoir de s'engager par lettre de change, la souscription ou l'endossement donne droit au détenteur de recevoir paiement de la lettre et d'exercer son recours contre toute autre partie à la lettre.

Signature essentielle pour lier.

23. Nul n'est responsable comme tireur, endosseur ou accepteur d'une lettre de change, s'il ne l'a pas signée comme tel ; mais—

Exceptions.

(a.) Si une personne signe une lettre de change d'un nom commercial ou supposé, elle est responsable à son égard comme si elle l'eût signée de son propre nom ;

(b.) La signature du nom d'une raison sociale équivaut à la signature par la personne qui a signé, des noms de

toutes les personnes responsables comme associées sous cette raison.

24. Sauf les dispositions du présent Acte, lorsqu'une signature sur une lettre de change est contrefaite ou y est apposée sans l'autorisation de la personne dont elle est supposée être la signature, la signature contrefaite ou non autorisée ne peut avoir aucun effet, et aucun droit de garder la lettre de change, ou d'en donner décharge, ou d'en exiger le paiement de qui que ce soit qui y est devenu partie, ne peut être acquis à cause ou en vertu de cette signature, à moins que celui contre qui l'on veut détenir la lettre, ou à qui on en demande le paiement, ne soit pas admis à opposer le faux ou l'absence d'autorisation.

Toutefois, rien dans le présent article n'affectera la ratification d'une signature non autorisée ne constituant pas un faux; et si un chèque payable à ordre est payé par le tiré, sur un faux endossement, à même les fonds du tireur, ou est ainsi payé et porté à son compte, le tireur ne pourra exercer contre le tiré aucune action en répétition de la somme ainsi payée, ni opposer aucune exception à la demande du tiré pour la somme ainsi payée, suivant le cas, à moins qu'il n'ait notifié par écrit le faux au tiré dans le cours d'une année à partir du jour auquel il aura eu connaissance de ce faux; et à défaut par le tireur de donner la notification dans le délai ci-dessus, le chèque sera censé avoir été régulièrement payé à l'égard de toute autre personne, qui, y étant partie ou y étant dénommée, n'aura pas auparavant exercé de procédures pour la protection de ses droits.

25. Une signature par procuration comporte notification que le mandataire n'a qu'une autorisation restreinte de signer, et le commettant n'est lié par cette signature que si le mandataire, en signant ainsi, n'a agi que dans les limites précises de son mandat.

26. Si une personne signe une lettre de change comme tireur, endosseur ou accepteur, et ajoute à sa signature des mots indiquant qu'elle signe pour un commettant ou en son nom, ou en qualité de représentant, elle n'est pas liée personnellement; mais la simple addition à sa signature de mots la décrivant comme étant un mandataire ou agent, ou comme agissant en qualité de représentant, ne la dégage pas de sa responsabilité personnelle.

Règle à suivre
en détermi-
nant la signa-
ture.

2. En déterminant si une signature apposée sur une lettre de change est celle du commettant ou celle du mandataire qui l'a écrite, l'on adoptera l'interprétation la plus favorable à la validité de l'effet.

De la cause d'une lettre de change.

Cause de
valeur, com-
ment cons-
tituée.

27. Cause de valeur (*valuable consideration*) pour une lettre de change peut être constituée par—

(a.) Toute cause suffisante pour donner validité à un simple contrat :

(b.) Une dette ou une obligation préexistante. Une pareille dette ou obligation est réputée cause de valeur, que la lettre soit payable sur demande ou à terme.

Si le déten-
teur a donné
valeur.

2. Lorsqu'une valeur a été en aucun temps donnée pour une lettre de change, le détenteur est considéré comme détenteur contre valeur vis-à-vis de l'accepteur et de toutes parties à la lettre de change devenues telles avant cette époque.

Droit de
rétention de
la lettre.

3. Lorsque le détenteur d'une lettre de change a un droit de rétention (*lien*) sur cette lettre, né d'un contrat ou par interprétation tacite de la loi, il est considéré comme un détenteur contre valeur jusqu'à concurrence de la somme pour laquelle il peut exercer ce droit.

Partie à une
lettre de com-
plaisance.

28. Est partie à une lettre de complaisance (*accommodation party*) toute personne qui a signé la lettre comme tireur, accepteur ou endosseur, sans avoir reçu valeur, et dans le but de prêter son nom à une autre personne.

Envers qui
lié.

2. Toute partie à une lettre de complaisance est liée par cette lettre vis-à-vis du détenteur contre valeur ; et il est indifférent que, lorsqu'il a pris cette lettre, le détenteur sût ou non que le signataire était tel par complaisance.

Détenteur
régulier.

29. Un détenteur régulier (*in due course*) est un détenteur qui a pris une lettre de change dont la rédaction est en règle et parfaite, dans les conditions suivantes, savoir :—

(a.) Qu'il en est devenu possesseur avant son échéance et sans avoir été notifié qu'elle eût été antérieurement refusée à l'acceptation ou au paiement, si tel est le cas ;

(b.) Qu'il a pris la lettre de change de bonne foi et contre valeur, et qu'à l'époque où elle lui a été négociée il n'avait été notifié d'aucun vice affectant le titre du cédant.

2. Particulièrement, le titre d'une personne qui négocie une lettre de change est défectueux dans le sens du présent acte quand elle a obtenu la lettre, ou son acceptation, par fraude, contrainte, violence ou intimidation, ou par d'autres moyens illégaux, ou pour une cause illicite, ou quand la négociation constitue un abus de confiance, ou est accomplie dans de telles circonstances qu'elle constitue une fraude.

3. Un détenteur (contre valeur ou non) qui tient son titre à une lettre de change d'un détenteur régulier, et qui n'est lui-même partie à aucune fraude ou illégalité qui la vicie, a tous les droits du détenteur régulier contre l'accepteur et toutes les parties à cette lettre antérieures à ce détenteur.

30. Toute partie dont la signature figure sur une lettre de change est *primâ facie* réputée l'être devenue contre valeur.

2. Et tout détenteur d'une lettre de change est *primâ facie* réputé détenteur régulier ; mais si, dans une action sur une lettre de change, il est admis ou prouvé que l'acceptation, l'émission ou la négociation postérieures de la lettre sont entachées de fraude, contrainte, violence ou intimidation, ou d'illégalité, le fardeau de la preuve qu'il en est le détenteur régulier lui incombe, à moins et jusqu'à ce qu'il prouve que, postérieurement à la fraude ou à l'illégalité alléguée, valeur pour la lettre a été de bonne foi donnée par quelque autre détenteur régulier.

3. Nulle lettre de change, bien que donnée pour une cause usuraire, ou à la suite d'un contrat usuraire, n'est nulle entre les mains d'un détenteur, à moins que ce détenteur n'eût, lorsqu'elle lui a été transférée, connaissance réelle qu'elle avait été donnée à l'origine pour une cause usuraire ou à la suite d'un contrat usuraire.

4. Sur le corps de chaque lettre de change ou billet ayant pour cause, en tout ou en partie, le prix de vente soit d'un brevet, soit d'un intérêt partiel (limité territorialement ou autrement) dans un droit de brevet, seront écrits ou imprimés transversalement, d'une manière dis-

Vice de titre en certains cas.

Droit du détenteur subséquent.

Présomption de valeur et de bonne foi.

A qui incombe la preuve.

Cause usuraire.

Certains mots doivent être écrits sur les effets pour droits de brevet.

tinete et lisible, avant l'émission de l'effet, les mots : "Donné pour droit de brevet," et s'il ne porte pas ces mots, l'effet et tout renouvellement d'icelui seront nuls, si ce n'est entre les mains du détenteur régulier qui n'aurait pas connu cette cause.

Le cessionnaire ne l'accepte que sans recours.

5. Le porteur par endossement ou autre cessionnaire d'un effet de ce genre sur lequel la mention ci-dessus aura été ainsi écrite ou imprimée, le prendra sous réserve de tout moyen de défense ou de compensation qui pourrait être produit par rapport à tout ou partie de l'effet entre les contractants originaires.

Punition pour contravention.

6. Quiconque émettra, vendra ou transportera par endossement ou par délivrance un pareil effet sans que les mots "Donné pour droit de brevet" aient été imprimés ou écrits, comme il est dit ci-dessus, transversalement sur le corps de l'effet, sachant qu'il a pour cause, en tout ou en partie, le prix de vente soit d'un droit de brevet, soit d'un intérêt partiel (limité territorialement ou autrement) dans un droit de brevet, sera coupable de délit, et passible d'emprisonnement pendant toute période n'excédant pas un an, ou de telle amende, n'excédant pas deux cents piastres, que la cour croira à propos d'infliger.

De la négociation des lettres de change.

Négociation des lettres.

31. Une lettre de change est négociée quand elle est transférée d'une personne à une autre de manière à constituer le cessionnaire détenteur de la lettre.

Au porteur.

2. Une lettre payable au porteur se négocie par livraison.

A ordre.

3. Une lettre payable à ordre se négocie par l'endossement du détenteur avec livraison de la lettre.

Sans endossement.

4. Si le détenteur d'une lettre de change payable à ordre la transfère contre valeur sans l'endosser, ce transfert investit le cessionnaire des mêmes droits qu'avait le cédant sur la lettre, et le cessionnaire acquiert en outre le droit de requérir l'endossement du cédant.

L'engagement personnel peut être évité.

5. Lorsqu'une personne se trouve dans l'obligation d'endosser une lettre de change en qualité de représentant d'une autre, elle peut le faire en se servant de termes qui dégagent sa responsabilité personnelle.

32. Un endossement, pour opérer négociation valable, doit remplir les conditions suivantes, savoir :—

Formalités de l'endossement.

(a.) Il doit être écrit sur la lettre même et signé de l'endosseur. La simple signature de l'endosseur sur la lettre, sans y rien ajouter, est suffisante.

Un endossement écrit sur une allonge, ou sur une copie d'une lettre de change émise ou négociée dans un pays où les copies sont admises, est considéré comme écrit sur la lettre elle-même.

(b.) L'endossement doit couvrir la valeur totale de la lettre de change. Un endossement partiel, c'est-à-dire, un endossement qui ne transférerait au bénéficiaire par endossement qu'une partie seulement de la somme à payer, ou qui transférerait la lettre à deux bénéficiaires ou plus séparément, ne constitue pas une négociation de la lettre.

(c.) Lorsqu'une lettre de change est payable à deux ou plus de deux preneurs ou bénéficiaires par endossement qui ne sont pas associés, tous doivent l'endosser, à moins que celui qui l'endosse ne soit autorisé à le faire pour les autres.

2. Lorsque, dans une lettre de change payable à ordre, le nom du preneur ou du bénéficiaire par endossement est inexact ou mal orthographié, il peut endosser la lettre tel qu'il y est désigné, en ajoutant sa vraie signature, ou il peut l'endosser de sa propre signature.

Nom mal orthographié.

3. Lorsqu'il y a deux endossements ou plus sur une lettre de change, chaque endossement est considéré comme ayant été fait dans l'ordre apparent sur la lettre, à moins de preuve contraire.

S'il y a plusieurs endossements.

4. Un endossement peut être en blanc ou spécial ; il peut aussi contenir des restrictions.

Endossement spécial.

33. Quand une lettre de change comporte avoir été endossée conditionnellement, le payeur peut ne pas tenir compte de cette condition, et le paiement au bénéficiaire par endossement sera valable, que la condition ait été remplie ou non.

Endossement conditionnel.

34. Un endossement en blanc ne désigne aucun bénéficiaire, et une lettre ainsi endossée devient payable au porteur.

Endossement en blanc.

2. Un endossement spécial désigne la personne à qui ou à l'ordre de qui la lettre est payable.

Endossement spécial.

Application
de l'acte au
bénéficiaire.

3. Les dispositions du présent acte relatives à un preneur s'appliquent, avec les modifications nécessaires, à un bénéficiaire en vertu d'un endossement spécial.

Conversion
d'un endosse-
ment en blanc.

4. Lorsqu'une lettre de change a été endossée en blanc, tout détenteur peut convertir cet endossement en un endossement spécial, en écrivant, au-dessus de la signature de l'endosseur, l'ordre de payer la lettre à lui-même ou à son ordre, ou à quelque autre personne ou à son ordre.

Endossement
restrictif.

35. Un endossement est restrictif s'il interdit la négociation postérieure de la lettre ou s'il exprime qu'il n'est qu'une simple autorisation de faire de la lettre ce qu'il prescrit, et non pas le transfert de la propriété de la lettre, comme, par exemple, si une lettre est endossée: "Payez à D. seulement," ou "Payez à D. pour le compte de X.," ou "Payez à D. ou à son ordre pour recouvrement."

Droit du
bénéficiaire.

2. Un endossement restrictif confère au bénéficiaire le droit de recevoir paiement de la lettre et de poursuivre toute partie à la lettre que son endosseur aurait pu poursuivre, mais ne lui donne aucun pouvoir de transférer ses droits comme bénéficiaire, à moins que l'endossement ne l'y autorise formellement.

Si un nouveau
transfert est
autorisé.

3. Si un endossement restrictif autorise un transfert postérieur, tous les bénéficiaires ultérieurs jouissent, en recevant la lettre, des mêmes droits et sont soumis aux mêmes obligations que le premier bénéficiaire en vertu de l'endossement restrictif.

Quand une
lettre cesse
d'être négoci-
able.

36. Une lettre de change négociable à l'origine continue de l'être jusqu'à ce qu'il y ait eu (a) endossement restrictif, ou (b) décharge par suite de paiement ou autrement.

Négociation
d'une lettre en
souffrance.

2. Si une lettre de change en souffrance est négociée, elle ne peut l'être qu'en restant sujette à tout vice de titre l'affectant lors de son échéance, et dès lors nulle personne qui la reçoit ne peut acquérir ou transmettre un titre meilleur que celui qu'avait la personne de qui elle la tient.

Quand une
lettre est
réputée en
souffrance.

3. Une lettre payable sur demande est réputée en souffrance, suivant le sens et pour les fins du présent article, lorsqu'il appert à sa face même qu'elle a été en circulation pendant un temps exagéré. C'est une question

de fait de savoir ce qui constitue dans ce cas une période de temps exagérée.

4. Sauf lorsqu'un endossement porte une date postérieure à l'échéance de la lettre, toute négociation est *prima facie* réputée avoir été faite avant que la lettre ne fût en souffrance.

Présomption
au sujet de la
négociation.

5. Lorsqu'une lettre de change qui n'est pas en souffrance a subi un refus, celui qui la prend après avoir reçu notification de ce refus, la prend sujette à tout vice de titre s'y attachant lors du refus, mais rien dans le présent paragraphe n'affectera les droits d'un détenteur régulier.

Recevoir une
lettre non
honorée.

37. Si une lettre de change est négociée au tireur, ou à un endosseur antérieur, ou à l'accepteur, le détenteur peut, sauf les dispositions du présent acte, la remettre en circulation et négocier de nouveau, mais il ne peut en exiger le paiement d'aucune partie vis-à-vis de qui il était antérieurement lié.

Négociation
d'une lettre à
une partie
déjà liée.

38. Les droits et pouvoirs du détenteur d'une lettre de change sont les suivants :—

Droits du
détenteur.

(a.) Il peut poursuivre le recouvrement de la lettre en son propre nom ;

(b.) S'il est détenteur régulier, il possède la lettre affranchie de tout vice de titre des parties qui le précèdent ainsi que des moyens de défense personnelle que pouvaient faire valoir les parties antérieures entre elles et a recours, pour le paiement de la lettre, contre toutes les parties qui sont liées par la lettre ;

(c.) Si son titre est défectueux, (1) et s'il a négocié la lettre à un détenteur régulier, ce détenteur acquiert un droit valable et parfait sur la lettre ; et (2) s'il reçoit paiement de la lettre, la personne qui la paie en cours régulier est valablement libérée.

Des obligations générales du détenteur.

39. Lorsqu'une lettre de change est payable à vue ou à un certain délai de vue, sa présentation à l'acceptation est nécessaire pour en fixer l'échéance.

Présentation
à l'accepta-
tion, quand
nécessaire.

2. Quand une lettre de change stipule expressément qu'elle sera présentée à l'acceptation, ou quand elle est tirée payable ailleurs qu'au domicile ou au siège d'affaires du

Stipulation
expresse.

tiré, elle doit être présentée à l'acceptation avant de l'être pour le paiement.

Par de présen-
tation dans
d'autres cas.

Retard inévi-
table dans la
présentation.

3. Dans aucun autre cas la présentation à l'acceptation n'est nécessaire pour lier aucune des parties à la lettre.

4. Lorsque le détenteur d'une lettre de change payable ailleurs qu'au domicile ou lieu d'affaires du tiré n'a pas eu le temps, tout en faisant diligence raisonnable, de présenter la lettre à l'acceptation avant de la présenter au paiement le jour de son échéance, le retard qu'entraînerait la présentation à l'acceptation avant la présentation au paiement est excusé et n'a pas l'effet de libérer le tireur ni les endosseurs.

Présentation
d'un lettre
payable après
vue.

40. Sauf les dispositions du présent acte, quand une lettre de change payable à un certain délai de vue est négociée, le détenteur doit, soit la présenter à l'acceptation, soit la négocier dans un délai raisonnable.

Si elle n'est pas
présentée

2. S'il ne le fait pas, le tireur et tous les endosseurs antérieurs sont libérés.

Ce qu'est un
délai raison-
nable.

3. Pour déterminer ce qu'il faut entendre par délai raisonnable dans le sens du présent article, on devra tenir compte de la nature de la lettre de change, des usages du commerce à l'égard des effets de même genre, et des circonstances particulières.

Règles à suivre
pour la pré-
sentation à
l'acceptation.

41. Une lettre de change est dûment présentée à l'acceptation si elle est présentée en conformité des règles qui suivent :—

(a.) La présentation doit être faite par le détenteur ou en son nom au tiré ou à quelque personne autorisée à l'accepter ou à refuser l'acceptation en son nom, à une heure convenable, un jour ouvrable, et avant l'échéance de la lettre :

(b.) Si une lettre est adressée à deux ou plus de deux tirés qui ne sont pas associés, la présentation doit être faite à chacun d'eux, à moins que l'un d'entre eux ne soit autorisé à l'accepter pour tous,—auquel cas la présentation à celui-ci seul suffit ;

(c.) Si le tiré est décédé, la présentation peut être faite à son représentant personnel ;

(d.) Quand l'usage ou une convention l'autorise, la présentation faite par la voie de la poste suffit.

2. La présentation faite en conformité de ces règles n'est pas exigée, et une lettre de change peut être traitée comme ayant subi un refus d'acceptation,—

Excuses de la non-présentation.

(a.) Si le tiré est mort ou en faillite, ou n'est qu'une personne fictive ou inhabile à contracter par lettre de change ;

(b.) Si, après avoir fait toute diligence raisonnable, la présentation n'a pu avoir lieu ;

(c.) Si, bien que la présentation ait été irrégulière, l'acceptation a été refusée pour quelque autre motif.

3. Le fait que le détenteur a lieu de croire que la lettre de change, sur présentation, subira un refus, ne le dispense pas de cette présentation.

Ce qui n'est pas une excuse.

42. Lorsqu'une lettre de change a été dûment présentée à l'acceptation et n'a pas été acceptée le jour même de la présentation ou dans les deux jours suivants, celui qui l'a présentée doit la traiter comme ayant subi un refus d'acceptation. S'il ne le fait pas, le détenteur perd son droit de recours contre le tireur et les endosseurs.

Refus d'acceptation.

43. Une lettre de change est considérée comme ayant subi un refus d'acceptation,—

Conséquences du refus.

(a.) Lorsqu'elle est dûment présentée à l'acceptation et que l'acceptation prescrite par le présent acte est refusée ou ne peut être obtenue ; ou—

(b.) Lorsque la présentation à l'acceptation est excusée et que la lettre n'a pas été acceptée.

2. Sauf les dispositions du présent acte, lorsqu'une lettre de change a subi un refus d'acceptation, le détenteur a immédiatement droit de recours contre le tireur et les endosseurs, et il n'est pas nécessaire de la présenter au paiement.

Recours en tous cas.

44. Le détenteur d'une lettre de change peut refuser de recevoir une acceptation restreinte, et s'il n'obtient pas une acceptation pure et simple, il peut traiter la lettre comme si elle avait subi un refus d'acceptation.

Acceptation restreinte.

2. Si le détenteur se contente d'une acceptation restreinte, sans que le tireur ou un endosseur l'ait autorisé formellement ou implicitement, à recevoir une pareille acceptation, ou sans qu'il l'ait postérieurement ratifiée, ce tireur ou cet endosseur est dégagé de ses obligations nées de la lettre de change.

Si elle est acceptée sans autorisation.

Acceptation
partielle.

Les dispositions du présent paragraphe ne s'appliquent pas à une acceptation partielle dont avis régulier a été donné. Lorsqu'une lettre de change étrangère a été acceptée pour partie, elle doit être protestée pour le surplus.

Ce qui est
réputé consen-
tement.

3. Lorsque le tireur ou l'endosseur d'une lettre de change est notifié d'une acceptation restreinte, et qu'il n'exprime pas son opposition au détenteur dans un délai raisonnable, il est considéré comme l'ayant ratifiée.

Présentation
au paiement.

45. Sauf les dispositions du présent Acte, une lettre de change doit être dûment présentée au paiement; autrement, le tireur et les endosseurs sont libérés.

Règles à
suivre.

2. Une lettre de change est dûment présentée au paiement si elle l'est en conformité des règles suivantes :—

Temps.

(a.) Si la lettre de change n'est pas payable sur demande, elle doit être présentée le jour de son échéance ;

Délai raison-
nable.

(b.) Lorsque la lettre est payable sur demande, elle doit, sauf les dispositions du présent acte, être présentée dans un délai raisonnable de son émission pour lier le tireur, et dans un délai raisonnable de son endossement pour lier l'endosseur ;

Pour déterminer ce qu'il faut entendre par délai raisonnable, on devra tenir compte de la nature de la lettre de change, des usages du commerce à l'égard de ces effets, et des circonstances particulières ;

Par qui et à
qui.

(c.) La présentation doit être faite par le détenteur ou par quelque personne autorisée à en recevoir le paiement en son nom, au lieu voulu tel que ci-dessous défini, soit à la personne désignée par la lettre comme payeur, soit à son représentant ou à quelque personne autorisée à payer ou à refuser paiement en son nom, si en faisant diligence raisonnable cette personne peut y être trouvée ;

Lieu voulu.

(d.) Une lettre de change est présentée au lieu voulu :—

(1.) Si le lieu de paiement est indiqué dans la lettre ou l'acceptation, et si elle y est présentée ;

(2.) S'il n'y a pas de désignation de lieu de paiement, mais si l'adresse du tiré ou de l'accepteur est mentionnée dans la lettre et que celle-ci y est présentée ;

(3.) Si aucun lieu de paiement n'est indiqué et aucune adresse n'est mentionnée, et si la lettre de change est présentée au siège des affaires, s'il est connu, du tiré ou

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de l'accepteur, ou, s'il ne l'est pas, à son domicile ordinaire, s'il est connu ;

(4.) Dans tout autre cas, si elle est présentée au tiré ou à l'accepteur en quelque lieu qu'on le trouve, ou au dernier lieu connu de ses affaires ou de son domicile.

3. Lorsqu'une lettre de change est présentée au lieu voulu, et qu'après avoir fait toute diligence raisonnable on n'y peut trouver personne qui soit autorisé à payer ou à refuser le paiement, aucune autre présentation au tiré ou à l'accepteur n'est nécessaire.

4. Lorsqu'une lettre de change est tirée sur deux personnes ou plus, ou acceptée par deux personnes ou plus, qui ne sont pas associées, et qu'aucun lieu de paiement n'est indiqué, la lettre de change doit être présentée à chacune d'elles.

5. Lorsque le tiré ou l'accepteur décédé et qu'aucun lieu de paiement n'est indiqué, la lettre doit être présentée à un représentant personnel, s'il y en a un et si, en faisant diligence raisonnable, on peut le trouver.

6. Si elle est autorisée par une convention ou par l'usage, la présentation faite par la voie de la poste est suffisante.

7. Lorsque le lieu du paiement est indiqué dans la lettre de change ou dans l'acceptation est une cité, une ville ou un village, et qu'il n'y est pas désigné d'endroit particulier pour sa présentation, si la lettre est présentée au siège d'affaires connu du tireur ou de l'accepteur, ou à son domicile ordinaire connu dans cette cité, cette ville ou ce village, ou, en l'absence de pareil siège d'affaires ou domicile, si la lettre est présentée au bureau de poste, ou au principal bureau de poste de cette cité ou ville, ou de ce village, la présentation est suffisante.

46. Le retard dans la présentation au paiement est excusé lorsque ce retard est causé par des circonstances indépendantes de la volonté du détenteur et n'est pas imputable à sa propre faute, son incurie ou sa négligence. Lorsque la cause du retard disparaît, la présentation doit être faite avec toute diligence raisonnable.

2. Le détenteur est dispensé de la présentation au paiement, —

(a.) Si, après avoir fait diligence raisonnable, la présentation, telle que prescrite par le présent acte, ne peut s'effectuer ;

Si la personne ne peut être trouvée.

S'il y a plus d'un tiré ou d'un accepteur.

Si le tiré ou l'accepteur est mort.

Présentation par la poste.

Présentation au bureau de poste.

Retard dans la présentation, ce qui l'excuse.

Quand il y a la dispense de faire.

Le fait que le détenteur a lieu de croire que la lettre sur sa présentation subira un refus, ne le dispense pas de la nécessité de cette présentation ;

(b.) Si le tiré est une personne fictive ;

(c.) En ce qui concerne le tireur, si le tiré ou l'accepteur n'est pas obligé envers lui d'accepter ou de payer la lettre, et si le tireur n'a aucune raison de croire que la lettre serait payée si elle était présentée ;

(d.) En ce qui concerne un endosseur, si la lettre a été acceptée ou faite par complaisance pour cet endosseur, et s'il n'a pas de raison pour espérer que la lettre serait payée si elle était présentée ;

(e.) S'il y a dispense de présentation expresse ou tacite.

**Lettre refusée
au paiement.**

47. Une lettre de change est "deshonorée" faute de paiement (a) quand elle a été dûment présentée au paiement et que celui-ci a été refusé ou n'a pu être obtenu, ou (b) quand le défaut de présentation est excusé et que la lettre est en souffrance et impayée.

**Recours en ce
cas.**

2. Sauf les dispositions du présent Acte, lorsqu'une lettre de change a subi un refus de paiement, le détenteur a un droit de recours immédiat contre le tireur, l'accepteur et les endosseurs.

**Avis du refus
et effet de
l'omission de
le donner.**

48. Sauf les dispositions du présent Acte, si une lettre de change a subi un refus d'acceptation ou de paiement, avis de ce refus doit être donné au tireur et à chaque endosseur, et tout tireur ou endosseur à qui cet avis n'est pas donné est libéré. Toutefois—

(a.) Si la lettre de change a subi un refus d'acceptation et qu'avis de ce refus n'ait pas été donné, les droits du détenteur régulier devenu tel postérieurement à cette omission restent cependant intacts ;

(b.) Si la lettre a subi un refus d'acceptation et qu'avis du refus ait été dûment donné, il n'est pas nécessaire de donner avis du refus de paiement, à moins que, dans l'intervalle, la lettre n'ait été acceptée.

**Règles à
suivre en don-
nant l'avis.**

49. Avis du refus, pour être valable et effectif, doit être donné conformément aux règles suivantes :—

(a.) L'avis doit être donné par le détenteur ou en son nom, ou par un endosseur ou en son nom, qui, lorsqu'il est donné, est lui-même lié par la lettre de change ;

(b.) L'avis peut être donné par un mandataire, soit en son propre nom, soit au nom de toute personne ayant droit de donner l'avis, que cette personne soit ou non son commettant ;

(c.) Lorsque l'avis est donné par le détenteur ou en son nom, il profite à tous les détenteurs subséquents et à tous les endosseurs antérieurs, qui ont un droit de recours contre la partie à qui il est donné ;

(d.) Lorsque l'avis est donné par un endosseur, tenu de donner cet avis ainsi que ci-dessus réglé, ou en son nom, il profite au porteur et à tous les endosseurs postérieurs à celui qui a reçu l'avis ;

(e.) L'avis peut être donné par écrit ou verbalement, en tous termes précisant suffisamment la lettre de change et intimant qu'elle a subi un refus d'acceptation ou de paiement ;

(f.) Le renvoi au tireur ou à un endosseur d'une lettre de change qui a subi un refus constitue, quant à la forme, avis suffisant du refus ;

(g.) Un avis donné par écrit n'a pas besoin d'être signé, et un avis par écrit, mais incomplet, peut être complété et rendu valable par une communication verbale. Une désignation erronée de la lettre de change ne vicie pas l'avis, à moins que celui qui le reçoit ne soit réellement par là induit en erreur ;

(h.) S'il est prescrit qu'avis du refus doit être donné à une personne déterminée, il peut être donné soit à la personne elle-même, soit à son mandataire à cet effet ;

(i.) Si le tireur ou l'endosseur est mort, et si celui qui donne l'avis en a connaissance, l'avis doit être donné à son représentant personnel s'il y en a un et si, en faisant diligence raisonnable, il peut être trouvé ;

(j.) S'il y a deux ou plus de deux tireurs ou endosseurs qui ne sont pas associés, l'avis doit être donné à chacun d'eux, à moins que l'un d'entre eux ne soit autorisé à recevoir pour les autres ;

(k.) L'avis peut être donné aussitôt après le refus d'acceptation ou de paiement, et doit l'être au plus tard le premier jour juridique ou ouvrable suivant.

2. Si une lettre de change, lorsqu'elle a subi un refus, est entre les mains d'un mandataire, il peut soit donner lui-même avis aux parties obligées par la lettre, soit en notifier son commettant. S'il en notifie son commettant,

Si la lettre refusée est entre les mains d'un mandataire.

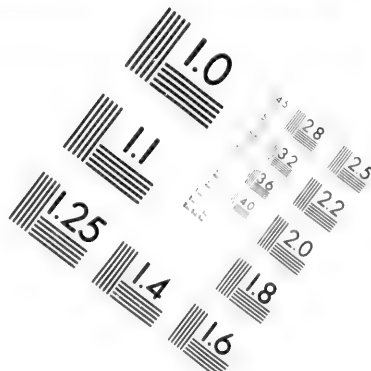
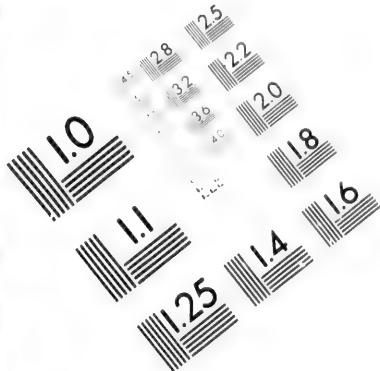
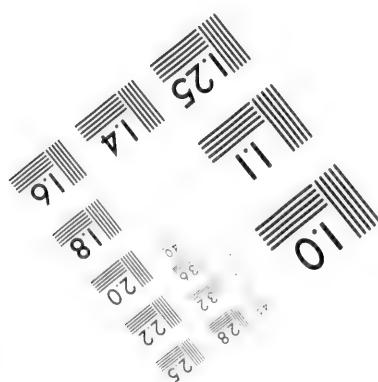
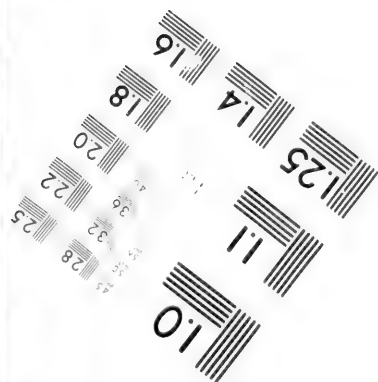
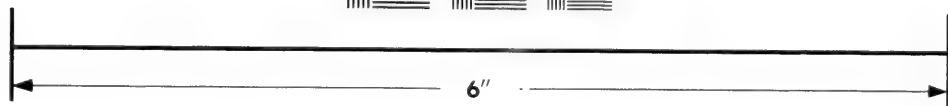
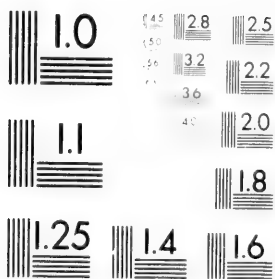


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il doit le faire dans le même délai que s'il était le détenteur; et le commettant, au reçu de cette notification, a le même délai pour donner avis que si son représentant était un détenteur indépendant.

3. Lorsqu'une partie à une lettre de change reçoit avis régulier du refus d'acceptation ou de paiement, elle a, après avoir reçu cet avis, même délai pour donner avis aux parties qui la précédent qu'a le détenteur lui-même après ce refus. Avis à une partie antérieure.

4. Avis du protêt ou du refus d'acceptation ou de paiement d'une lettre de change payable en Canada est, nonobstant tout ce que contenu à ce contraire dans le présent article, réputé suffisamment donné, s'il est adressé, en temps opportun, à toute partie à cette lettre ayant droit de recevoir cet avis, à son adresse ou à son domicile ordinaires ou au lieu d'où la lettre est datée, à moins que cette partie n'ait désigné sur la lettre, sous sa signature, un autre lieu; et dans ce dernier cas cet avis est suffisamment donné s'il lui est adressé, en temps opportun, à cet autre lieu; et l'avis ainsi adressé est suffisant, bien que le domicile de cette partie soit établi ailleurs qu'à l'un ou l'autre des lieux ci-dessus mentionnés; et cet avis est réputé avoir été dûment signifié et donné, à toutes fins et intentions, s'il est déposé, port payé, à un bureau de poste en tout temps durant le jour où a été fait le protêt ou la présentation, ou le jour juridique ou ouvrable immédiatement suivant. Cet avis n'est pas invalide par suite du fait que celui à qui il est adressé est mort. Quand l'avis sera donné.

5. Lorsqu'un avis de refus a été dûment adressé et déposé à la poste, ainsi qu'il a été dit ci-dessus, l'expéditeur est réputé avoir donné avis régulier de ce refus, même s'il ne parvient pas à son adresse par la faute de la poste. Faute de la poste.

50. Un retard à donner l'avis du refus est excusé lorsque ce retard est causé par des circonstances indépendantes de la volonté de celui qui donne l'avis, et qu'il n'est pas imputable à sa propre faute, son incurie ou sa négligence; et lorsque la cause du retard disparaît, l'avis doit être donné avec toute diligence raisonnable. Excuses du retard et de l'omission de donner l'avis.

2. Il y a dispense de donner avis du refus de la lettre— Quand il y a dispense de le donner.

(a.) Si, après avoir fait diligence raisonnable, l'avis tel que prescrit par le présent Acte n'a pu être donné ou n'est

pas parvenu au tireur ou à l'endosseur que l'on veut engager;

(b.) S'il y a renonciation expresse ou tacite. Cette renonciation à l'avis du refus peut être donnée soit avant l'époque où il doit être signifié, soit postérieurement à son omission;

(c.) En ce qui concerne le tireur, dans les cas suivants, savoir:—(1) quand le tireur et le tiré sont une seule et même personne; (2) quand le tiré est une personne fictive ou qui n'a pas capacité de contracter; (3) quand c'est au tireur que la lettre est présentée pour le paiement; (4) quand le tiré ou l'accepteur ne sont pas obligés, vis-à-vis du tireur, d'accepter ou de payer la lettre de change; (5) quand le tireur a contremandé le paiement;

(d.) En ce qui concerne l'endosseur, dans les cas suivants, savoir: (1) quand le tiré est une personne fictive ou qui n'a pas capacité pour contracter et que l'endosseur connaissait ce fait lorsqu'il a endossé la lettre de change; (2) quand l'endosseur est celui à qui la lettre de change est présentée au paiement; (3) quand la lettre a été acceptée ou tirée par complaisance pour lui.

51. Lorsqu'une lettre de change intérieure a été "deshonorée," le détenteur peut, s'il le juge à propos, la faire noter et protester pour défaut d'acceptation ou de paiement, selon le cas; mais à la réserve des dispositions du présent Acte relatives à l'avis du refus, il n'est pas nécessaire, sauf dans la province de Québec, de noter ou protester cette lettre pour conserver le droit de recours contre le tireur ou l'endosseur; mais à l'égard d'une lettre de change tirée sur quelqu'un dans la province de Québec, ou payable ou acceptée en quelque endroit de cette province le défaut de protêt, faute d'acceptation ou de paiement, suivant le cas et d'avis de ce protêt, libère les parties engagées par la lettre autres que l'accepteur, sauf, néanmoins, les exceptions ci-après exprimées au présent article.

2. Une lettre de change étrangère, paraissant telle d'après sa teneur, qui a subi un refus d'acceptation, doit être dûment protestée faute d'acceptation; et lorsqu'une pareille lettre, qui n'a pas déjà subi un refus d'acceptation, a subi un refus de paiement, elle doit être dûment protestée faute de paiement. Si elle n'est pas ainsi protestée, le tireur et les endosseurs sont libérés. Lorsqu'une lettre de change ne paraît pas, par sa teneur, être une lettre

Note ou protêt de la lettre.

Protêt d'une lettre étrangère.

étrangère, son protêt en cas de refus n'est, sauf ainsi que le prescrit le présent article, pas nécessaire.

Protêt ultérieur.

3. Une lettre de change protestée faute d'acceptation, ou une lettre à l'égard de laquelle il y a eu renonciation au protêt faute d'acceptation, peut ensuite être protestée faute de paiement.

Quand il faut noter.

4. Sauf les dispositions du présent Acte, lorsqu'une lettre de change est protestée, le protêt doit être fait ou noté le jour même de son refus. Lorsqu'une lettre de change a été dûment notée, le protêt peut ensuite être daté du jour de la note.

Si l'accepteur est en faillite.

5. Lorsque l'accepteur d'une lettre de change tombe en faillite, ou suspend ses paiements avant l'échéance de la lettre, le détenteur peut la faire protester pour plus ample garantie contre le tireur et les endosseurs.

Où le protêt doit être fait.

6. Une lettre de change doit être protestée au lieu même où elle subit un refus ou en quelque autre endroit du Canada situé dans un rayon de cinq milles du lieu où elle a été présentée et refusée; cependant—

(a.) Lorsqu'une lettre de change est présentée par la voie de la poste et renvoyée par la poste après avoir subi un refus, elle peut être protestée au lieu où elle est renvoyée le jour de son retour, ou le jour juridique suivant au plus tard;

(b.) Tout protêt pour refus d'acceptation ou de paiement peut être fait le jour même du refus, en tout temps après le refus d'acceptation, ou, dans le cas de refus de paiement, en tout temps après trois heures de l'après-midi.

Ce que le protêt doit contenir.

7. Le protêt doit contenir copie de la lettre de change, ou l'original de la lettre peut y être annexé, et le protêt doit être signé du notaire qui le fait, et spécifier—

(a.) La personne à la requête de qui la lettre est protestée;

(b.) Le lieu et la date du protêt, la cause ou la raison du protêt de la lettre, la demande faite et la réponse reçue, s'il en a été fait une, ou le fait que le tiré ou l'accepteur n'a pu être trouvé.

Si la lettre est perdue, etc.

8. Lorsqu'une lettre de change est perdue ou détruite, ou est injustement ou accidentellement détenue au détriment de celui qui y a droit, ou est accidentellement retenue dans un endroit ou lieu autre que celui où elle

est payable, le protêt peut être fait sur une copie ou sur un énoncé de ses détails fait par écrit.

9. Les circonstances qui dispenseraient de l'avis du refus suffisent pour dispenser du protêt de la lettre. Le retard à noter ou protester est excusé lorsqu'il est dû à des circonstances indépendantes de la volonté du détenteur, et s'il n'est pas imputable à sa propre faute, son incurie ou sa négligence. Quand la cause du retard disparaît, la lettre doit être notée ou protestée avec toute diligence raisonnable.

Excuses du retard et de l'omission du protêt.

10. Aucun commis, compteur ou agent d'une banque n'agira comme notaire pour le protêt d'une lettre de change ou d'un billet payable à la banque ou à une succursale de la banque où il est employé.

Un employé de banque ne peut agir comme notaire.

52. Lorsqu'on n'a indiqué aucun lieu pour le paiement dans la lettre de change ou l'acceptation, la présentation au paiement n'est pas nécessaire pour lier l'accepteur.

Responsabilité de l'accepteur.

2. Lorsqu'on a indiqué pour le paiement un lieu dans la lettre de change ou l'acceptation, l'accepteur, en l'absence de stipulation formelle à cet effet, n'est pas libéré par le défaut de présentation au paiement le jour de l'échéance de la lettre ; mais si quelque poursuite ou action est intentée sur cette lettre avant la présentation, la cour prononcera sur les frais à sa discrétion.

Quant à la présentation.

3. Pour lier l'accepteur d'une lettre de change, il n'est pas nécessaire de la protester ou de le notifier que cette lettre a été "deshonorée."

Protêt et avis pas nécessaires.

4. Lorsque le détenteur d'une lettre de change la présente au paiement, il doit exhiber la lettre à la personne à qui il demande le paiement ; et lorsqu'une lettre de change est payée, le détenteur doit la remettre de suite à celui qui la paie.

Présentation au paiement.

Des obligations des parties.

53. Une lettre de change n'a pas par elle-même l'effet d'un transport de fonds entre les mains du tiré disponibles pour le paiement de cette lettre ; et le tiré qui n'accepte pas une lettre de change ainsi que le prescrit le présent Acte, n'est pas lié par cet effet.

Fonds entre les mains du tiré.

54. L'accepteur d'une lettre de change, en l'acceptant, —
(a.) S'engage à la payer suivant la teneur de son acceptation ;

Engagement de l'accepteur

(b.) Est privé de la faculté de contester au détenteur régulier,—

1. L'existence du tireur, l'authenticité de sa signature, sa capacité ou l'autorisation qu'il avait de tirer la lettre ;

2. Dans le cas d'une lettre de change payable à l'ordre d'un tireur, la capacité du tireur à l'endosser dans le temps, mais non l'authenticité ou la validité de son endossement ;

3. Dans le cas d'une lettre de change payable à l'ordre d'un tiers, l'existence du preneur et sa capacité à l'endosser dans le temps, mais non l'authenticité ou la validité de son endossement.

Engagement
du tireur.

55. Le tireur d'une lettre de change, en la tirant,—

(a.) Promet que, sur présentation régulière, elle sera acceptée et payée suivant sa teneur, et s'engage, si elle subit un refus, à indemniser le détenteur ou tout endosseur qui aura été forcé de l'acquitter, pourvu que les formalités nécessaires à la suite d'un refus aient été dûment remplies ;

(b.) N'est pas admis à contester au détenteur régulier l'existence du preneur et sa capacité à l'endosser dans le temps.

Engagement
de l'endosseur.

2. L'endosseur d'une lettre de change, en l'endossant,—

(a.) Promet que, sur présentation régulière, elle sera acceptée et payée suivant sa teneur, et s'engage, dans le cas où elle subirait un refus, à indemniser le détenteur ou l'endosseur postérieur qui auraient été forcés de l'acquitter, pourvu que les formalités requises à la suite d'un refus aient été dûment remplies ;

(b.) N'est pas admis à contester au détenteur régulier l'authenticité et la régularité à tous égards de la signature du tireur et de tous les endosseurs antérieurs ;

(c.) N'est pas admis à contester à son bénéficiaire immédiat ou à un bénéficiaire postérieur par endossement, l'existence réelle et la validité de la lettre de change lors de son endossement, ni la régularité de son titre.

Celui qui signe
est lié comme
endosseur.

56. Celui qui signe une lettre de change autrement que comme tireur ou accepteur, est soumis à toutes les obligations d'un endosseur vis-à-vis d'un détenteur régulier, et est sujet à toutes les dispositions du présent Acte relatives aux endosseurs.

57. Si le paiement d'une lettre de change est refusé, le montant des dommages-intérêts, qui seront réputés liquides, se détermine comme il suit :—

Dommages-intérêts contre les parties à une lettre refusée.

(a.) Le détenteur peut recouvrer sur toute partie liée en vertu de la lettre ; le tireur qui a été forcé de payer la lettre peut recouvrer sur l'accepteur, et l'endosseur qui a été forcé de la payer peut recouvrer sur l'accepteur ou le tireur, ou sur un précédent endosseur :—

(1.) Le montant de la lettre de change ;

(2.) Les intérêts sur ce montant du jour de la présentation au paiement, si la dette est payable sur demande, et du jour de l'échéance de la lettre dans tout autre cas ;

(3.) Les frais de la note et du protêt ;

(b.) Dans le cas d'une lettre de change dont le paiement a été refusé à l'étranger, en sus des dommages-intérêts susmentionnés, le détenteur peut recouvrer sur le tireur ou un endosseur, et le tireur ou l'endosseur qui a été forcé de payer la lettre peut recouvrer sur toute partie liée envers lui, le montant du rechange, avec les intérêts sur ce montant jusqu'à l'époque du paiement.

58. Lorsque le détenteur d'une lettre de change payable au porteur la négocie par livraison sans l'endosser, il est appelé un "cédant par livraison."

"Cédant par livraison."

2. Le cédant par livraison n'est pas lié par la lettre.

Responsabilité.

3. Le cédant par livraison qui négocie une lettre de change garantit par cela même à son cessionnaire immédiat, détenteur contre valeur, que la lettre est ce qu'elle comporte être, qu'il a le droit de la transférer et qu'à l'époque du transfert il n'a connaissance d'aucun vice pouvant affecter sa validité.

Garantie.

De la libération.

59. Une lettre de change est acquittée par paiement régulier fait par ou pour le tiré ou l'accepteur.

Libération par paiement.

"Paiement régulier" signifie paiement fait à ou après l'échéance de la lettre à son détenteur de bonne foi et qui n'a reçu notification d'aucun vice pouvant affecter son titre.

Paiement régulier.

2. Sauf les dispositions ci-dessous contenues, quand une lettre de change est payée par le tireur ou un endosseur, il n'y a pas libération ; mais—

Paiement par le tiré ou l'endosseur ; son effet.

(a.) Si une lettre de change payable à un tiers ou à

son ordre est payée par le tireur, celui-ci peut en exiger le paiement de l'accepteur, mais ne peut remettre la lettre en circulation ;

(b.) Quand une lettre de change est payée par un endosseur, ou quand une lettre de change payable à l'ordre du tireur est payée par celui-ci, celui qui a payé est réintégré dans ses droits antérieurs contre l'accepteur ou les parties qui l'ont précédé et il peut, s'il le juge à propos, biffer son propre endossement et ceux qui le suivent, et négocier la lettre de nouveau.

Lettre de
complaisance.

3. Lorsqu'une lettre de complaisance est payée en cours régulier par celui au profit de qui elle a été tirée, la lettre est acquittée.

Accepteur
qui devient
détenteur à
l'échéance.

60. Quand l'accepteur d'une lettre de change en est ou devient le détenteur à ou après son échéance, de son propre chef, la lettre est acquittée.

Renonciation
expresse.

61. Lorsque le détenteur d'une lettre de change renonce, à ou après son échéance, absolument et sans conditions, à ses droits contre l'accepteur, la lettre est acquittée. La renonciation doit être faite par écrit, à moins que la lettre ne soit remise à l'accepteur.

Droits du
détenteur ré-
gulier sauve-
gardés.

2. Le détenteur d'une lettre de change peut également libérer de ses engagements toute partie à cette lettre, soit lors de l'échéance, soit avant ou après ; mais rien dans le présent article ne portera atteinte aux droits du détenteur régulier qui n'aurait pas été notifié de la renonciation.

Annulation
d'une lettre.

62. Lorsqu'une lettre de change est intentionnellement annulée par le détenteur ou son représentant, et que cette annulation y est apparente, la lettre est acquittée.

D'une signa-
ture.

2. De même, toute partie à une lettre de change peut être libérée par l'annulation intentionnelle de sa signature par le porteur ou son représentant. En ce cas, tout endosseur qui aurait un droit de recours contre celui dont la signature a été annulée, est également libéré.

Annulation
par erreur.

3. Une annulation faite involontairement ou par méprise, ou sans l'autorisation du détenteur, est sans effet ; mais si la lettre de change ou une des signatures dont elle est revêtue paraît avoir été annulée, la preuve du fait incombe à celui qui prétend que l'annulation a été involontaire, ou faite par méprise ou sans autorisation.

63. L'altération essentielle d'une lettre de change ou de son acceptation, sans le consentement de toutes les parties liées, entraîne l'annulation, excepté en ce qui concerne celui qui a fait ou autorisé l'altération, ou qui y a acquiescé, et les endosseurs subséquents.

Altération d'une lettre.

Toutefois un détenteur régulier qui a entre les mains une lettre de change qui a subi une altération essentielle, sans que celle-ci soit apparente, peut faire usage de la lettre comme si elle n'eût pas été altérée et en exiger le paiement suivant sa teneur primitive.

Proviso.

2. En particulier, les altérations suivantes sont essentielles, savoir : tout changement de la date, de la somme à payer, de l'époque du paiement, du lieu du paiement, et, lorsque la lettre a été acceptée sans restriction, de l'indication d'un lieu de paiement sans le consentement de l'accepteur.

Ce que sont des altérations essentielles.

De l'acceptation et du paiement par intervention.

64. Lorsqu'une lettre de change a été protestée faute d'acceptation ou pour obtenir plus ample garantie, et qu'elle n'est pas en souffrance, toute personne n'étant pas déjà obligée sur la lettre, peut, du consentement du détenteur, intervenir et accepter la lettre pour l'honneur de la personne tenue au paiement, ou pour l'honneur de celle pour le compte de qui la lettre est tirée.

Acceptation par intervention.

2. Une lettre de change peut être acceptée par intervention pour une partie seulement de la somme pour laquelle elle est tirée.

Acceptation de partie.

3. Une acceptation par intervention après protêt, pour être valable, doit—

Quand valable

(a.) Etre écrite sur la lettre et indiquer que c'est une acceptation par intervention ;

(b.) Etre signée par l'intervenant.

4. Lorsqu'une acceptation par intervention ne mentionne pas expressément pour l'honneur de qui elle est faite, elle est considérée comme une acceptation pour le tireur.

En faveur de qui.

5. L'échéance d'une lettre de change payable à un certain délai de vue et acceptée par intervention, court à compter du jour du protêt faute d'acceptation et non pas du jour de l'acceptation par intervention.

Calcul des délais.

Engagement de l'intervenant.

65. L'accepteur d'une lettre de change par intervention s'engage, en l'acceptant, à la payer sur présentation régulière conformément à la teneur de son acceptation, si elle n'est pas payée par le tiré, pourvu qu'elle ait été dûment présentée au paiement et protestée faute de paiement, et qu'il soit notifié de ces faits.

Envers qui lié.

2. L'accepteur par intervention est lié envers le détenteur et toutes les parties à la lettre de change postérieures à celle pour l'honneur de laquelle il l'a acceptée.

Présentation à l'accepteur par intervention.

66. Quand une lettre de change qui a subi un refus a été acceptée par intervention après protêt, ou quand elle indique un tiré au besoin, elle doit être protestée faute de paiement avant d'être présentée pour paiement à l'accepteur par intervention ou au tiré au besoin.

Quand elle doit être faite,

2. Quand l'accepteur par intervention a pour adresse le même endroit que celui où la lettre de change est protestée faute de paiement, la lettre doit lui être présentée au plus tard le lendemain de son échéance ; et s'il a pour adresse un autre endroit que celui où le protêt a eu lieu, elle doit être expédiée au plus tard le lendemain de son échéance pour lui être présentée.

Excuses de retard ou de l'omission de la présentation.

3. Est excusé tout retard ou défaut de présentation dû aux mêmes circonstances qui sont une excuse au retard ou au défaut de présentation au paiement.

Protêt faute de paiement.

4. Si l'accepteur par intervention refuse de payer une lettre de change qu'il a acceptée, elle doit être protestée faute de paiement par lui.

Paiement par intervention.

67. Lorsqu'une lettre de change a été protestée faute de paiement, toute personne peut intervenir et la payer par intervention en faveur de toute partie tenue au paiement, ou de celle pour le compte de qui elle a été tirée

Si plusieurs offrent de payer.

2. Si deux personnes ou plus offrent de payer une lettre de change pour l'honneur de différentes parties, la personne dont le paiement doit libérer le plus de parties à la lettre aura la préférence.

Attestation.

3. Le paiement par intervention, pour opérer comme tel et non comme simple paiement volontaire, doit être attesté par un acte notarié d'intervention, qui peut être annexé au protêt ou en former une allonge.

Déclaration de l'intervenant,

4. L'acte notarié d'intervention doit être fondé sur une déclaration du payeur intervenant, ou de son mandataire

à cet effet, constatant son intention de payer la lettre par intervention, et le nom de celui pour qui il la paie.

5. Quand une lettre de change a été payée par intervention, toutes les parties subséquentes à celle pour l'honneur de qui elle est payée sont libérées, mais l'intervenant est subrogé au détenteur et lui succède dans tous ses droits et obligations vis-à-vis de la partie pour l'honneur de qui il a payé et de toutes celles qui sont engagées envers celle-ci.

6. L'intervenant, en payant au détenteur le montant de la lettre de change et les frais de notaire résultant du défaut de paiement, a droit de recevoir la lettre elle-même et le protêt. Si le détenteur ne les lui remet pas sur demande, il est passible de dommages-intérêts envers le payeur par intervention.

7. Le détenteur d'une lettre de change qui refuse d'en recevoir le paiement par intervention, perd son droit de recours contre toute partie qui aurait été libérée par ce paiement.

Des effets perdus.

68. Lorsqu'une lettre de change a été perdue avant qu'elle ne soit en souffrance, la personne qui en était détenteur peut demander au tireur de lui en donner une autre de même teneur, en donnant au tireur, s'il l'exige, caution qu'il le garantira contre toutes personnes quelconques dans le cas où la lettre prétendue perdue serait retrouvée.

2. Si le tireur, sur demande faite comme sus-lit, refuse de donner un duplicata de la lettre, il peut y être contraint.

69. Dans toute action ou autre procédure relative à une lettre de change, les tribunaux ou le juge peuvent ordonner que la perte de la lettre ne soit pas invoquée comme moyen de défense, pourvu qu'on donne une garantie jugée suffisante par les tribunaux ou le juge contre toutes réclamations relatives à l'effet en question.

De la pluralité d'exemplaires.

70. Quand une lettre de change est tirée en plusieurs exemplaires, chaque exemplaire étant numéroté et contes-

nant référence aux autres, l'ensemble de ces exemplaires ne constitue qu'une seule lettre.

Endossées à différentes personnes.

2. Le détenteur des exemplaires qui en endosse deux ou plus à des personnes différentes est engagé pour chacun de ces exemplaires, et tout endosseur subséquent est engagé pour l'exemplaire qu'il a endossé comme si chacun formait une lettre distincte.

Négociées à différents détenteurs.

3. Lorsque deux exemplaires ou plus d'une série sont négociés à différents détenteurs réguliers, celui qui le premier a titre est considéré, à l'égard des autres détenteurs, comme le véritable propriétaire de la lettre ; mais rien dans le présent paragraphe n'affectera les droits d'une personne qui aura accepté ou payé en cours régulier le premier exemplaire à elle présenté.

Acceptation.

4. L'acceptation peut être écrite sur l'un quelconque des exemplaires, mais ne doit l'être que sur un seul.

Si plus d'un exemplaire est accepté.

5. Si le tiré accepte plusieurs exemplaires, et si ces exemplaires ainsi acceptés passent entre les mains de plusieurs détenteurs réguliers, il est lié par chacun comme s'ils étaient autant de lettres de change distinctes.

Paiement sans remettre l'exemplaire.

6. Quand l'accepteur d'une lettre de change tirée en plusieurs exemplaires la paie sans exiger la délivrance de l'exemplaire portant son acceptation, et qu'à l'échéance cet exemplaire se trouve impayé entre les mains d'un détenteur régulier, il est tenu envers celui-ci.

Libération.

7. Sans déroger aux règles précédentes, lorsqu'un exemplaire d'une lettre de change est libéré par paiement ou autrement, la lettre est libérée pour la totalité.

Conflit des lois.

Règles en cas de conflit des lois.

71. Lorsqu'une lettre de change tirée d'un pays est négociée, acceptée ou payable dans un autre, les droits, devoirs et obligations des parties sont déterminés comme il suit :—

Validité, comment déterminée.

(a.) La validité d'une lettre de change, quant aux conditions de forme, est déterminée par la loi du lieu d'émission, et la validité, quant aux conditions de forme, des contrats qui surviennent ultérieurement, tels que l'acceptation, ou l'endossement, ou l'acceptation après protêt, est déterminée par la loi du lieu où ces contrats ont été faits :

Proviso.

Toutefois,—

(1.) Une lettre de change émise hors du Canada reste valable bien qu'elle ne soit pas timbrée conformément à la loi du lieu de l'émission ;

(2.) Une lettre de change émise hors du Canada, dans les formes exigées par la loi du Canada, peut, dans le but d'en exiger le paiement, être traitée comme étant valable entre toutes personnes qui la négocient, la détiennent ou y deviennent parties en Canada ;

(b.) Sauf les dispositions du présent Acte, l'interprétation de la lettre, de l'endossement, de l'acceptation ou de l'acceptation après protêt, est régie par la loi du lieu où est fait chacun de ces contrats : Interprétation de la lettre, etc.

Mais lorsqu'une lettre de change intérieure est endossée à l'étranger, cet endossement doit, quant au payeur, être interprété suivant la loi du Canada ; Proviso.

(c.) Les devoirs du détenteur, quant à la présentation à l'acceptation ou au paiement, et quant à la nécessité ou la suffisance d'un protêt ou d'une notification du refus d'acceptation ou de paiement, ou autre formalité, sont déterminés par la loi du lieu où la chose est faite ou la lettre refusée ; Devoirs du détenteur.

(d.) Lorsqu'une lettre de change est tirée hors du Canada, mais qu'elle y est payable et que la somme à payer n'est pas exprimée en cours monétaire du Canada, cette somme doit, en l'absence de toute stipulation expresse, être calculée d'après le taux du change pour les traites à vue à l'endroit du paiement au jour de l'échéance de la lettre de change ; Cours monétaire.

(e.) Lorsqu'une lettre de change est tirée dans un pays et payable dans un autre, la date de son échéance est déterminée d'après la loi du lieu où elle est payable ; Date de l'échéance.

(f.) Si une lettre de change ou un billet présenté à l'acceptation, ou payable hors du Canada, est protesté pour défaut d'acceptation ou de paiement, une copie notariée du protêt et de la notification du refus d'acceptation ou de paiement, et un certificat notarié de la signification de cette notification, feront preuve *prima facie* devant toutes les cours du protêt, de la notification et de la signification. Preuve du protêt.

TROISIÈME PARTIE.

Chèques tirés sur une banque.

Définition du chèque.

72. Un chèque est une lettre de change tirée sur une banque et payable sur demande.

Application de certaines dispositions.

2. Sauf en ce qu'il est autrement prescrit dans cette partie, les dispositions du présent Acte concernant la lettre de change sur demande s'appliquent au chèque.

Présentation au paiement.

73. Sauf les dispositions du présent Acte,—

(a.) Quand un chèque n'est pas présenté au paiement dans un délai raisonnable de son émission, et que le tireur ou la personne pour le compte de qui il est tiré avait droit, au moment de la présentation, au paiement du chèque par la banque, et souffre par suite de ce retard un préjudice réel, il est libéré jusqu'à concurrence de ce préjudice, c'est-à-dire jusqu'à concurrence de ce dont il est créancier de la banque en excès de ce dont il l'aurait été si le chèque avait été payé ;

(b.) En déterminant ce qu'on doit entendre par délai raisonnable on doit tenir compte de la nature de l'effet, des usages du commerce et des banques, et des circonstances particulières ;

(c.) Le détenteur d'un tel chèque, à l'égard duquel le tireur ou l'ayant droit est libéré, sera, en son lieu et place, créancier de la banque jusqu'à concurrence de la somme pour laquelle il a été libéré, et pourra la recouvrer de celle-ci.

Révocation de l'autorisation de payer.

74. Le devoir et le pouvoir d'une banque de payer un chèque tiré sur elle par son client prennent fin par—

(a.) Contre-ordre de paiement ;

(b.) Notification de la mort du client.

Des chèques barrés.

Définition du chèque barré.

75. Lorsqu'il a été ajouté à un chèque, en travers de son recto,—

(a.) Le mot "banque," entre deux lignes transversales et parallèles, avec ou sans les mots "non négociable ;" ou :

(b.) Simplement deux lignes transversales et parallèles, avec ou sans les mots "non négociable ;"

Cette addition constitue un barrement, et le chèque est dit barré en blanc ou généralement.

2. Quand le nom d'une banque a été ajouté en travers d'un chèque, avec ou sans les mots "non négociable," cela constitue un barrement, et le chèque est alors barré spécialement et à cette banque. Barrement spécial.

76. Un chèque peut être barré en blanc ou spécialement par le tireur. Barrement par le tireur.

2. Quand un chèque n'est pas barré, le détenteur peut le barrer en blanc ou spécialement. Général ou spécial.

3. Quand un chèque est barré en blanc, le détenteur peut ensuite le barrer spécialement. Peut être change.

4. Lorsqu'un chèque est barré en blanc ou spécialement, le détenteur peut y ajouter les mots "non négociable." On peut ajouter des mots.

5. Quand un chèque est barré spécialement, la banque au nom de laquelle il a été barré peut le barrer de nouveau spécialement au nom d'une autre banque pour encaissement. Rebarrement pour encaissement.

6. La banque à qui un chèque non barré ou barré en blanc a été adressé pour l'encaissement peut le barrer spécialement à son nom. Barré par une banque.

7. Un chèque barré peut être rouvert ou débarré par le tireur en écrivant entre les lignes transversales et y apposant ses initiales, les mots : "payez comptant." Débarré.

77. Le barrement, tel qu'il est autorisé par le présent Acte, constitue une partie essentielle du chèque ; il n'est permis à qui que ce soit de l'effacer, ni, sauf tel que l'autorise le présent Acte, de le changer ou d'y ajouter quoi que ce soit. Le barrement fait partie essentielle du chèque.

78. Si un chèque est barré spécialement des noms de plusieurs banques, la banque sur laquelle il est tiré en refusera le paiement, sauf s'il est barré du nom d'une autre banque, agissant comme son agent, désignée pour en opérer le recouvrement. Devoirs de la banque au sujet des chèques barrés.

2. Si une banque paie un chèque tiré sur elle bien qu'il soit ainsi barré, ou paie à un autre qu'à une banque un chèque barré en blanc, ou paie un chèque barré spécialement à un autre qu'à la banque au nom de laquelle il est barré, ou à la banque son agent pour le recouvre- Responsabilité au sujet du paiement.

ment, elle est responsable envers le véritable propriétaire du chèque de tout préjudice causé par le paiement ainsi effectué.

Quand cesse la responsabilité.

Toutefois, si, lors de la présentation au paiement, le chèque ne paraît pas être barré, ou avoir porté des barres qui auraient été oblitérées, ou auxquelles on aurait fait subir quelque addition ou altération autrement que ne l'autorise le présent Acte, et que la banque le paie de bonne foi et sans négligence de sa part, elle ne sera pas responsable, et la validité du paiement ne pourra être contestée sur le motif que le chèque aurait été barré, ou que, étant barré, le barrement aurait été oblitéré, amplifié ou altéré autrement que ne l'autorise le présent Acte, et que le paiement aurait été fait à un autre qu'à une banque, ou à une banque autre que celle au nom de laquelle le chèque aurait été barré, ou à une banque lui servant d'agent pour le recouvrement, selon le cas.

Protection de la banque et du tireur si le chèque est barré.

79. La banque qui, de bonne foi et sans négligence de sa part, a payé un chèque barré tiré sur elle, s'il est barré en blanc, à une banque, ou, s'il est barré spécialement, à la banque désignée dans les barres, ou à la banque agissant comme son agent pour le recouvrement,—cette banque et, si le chèque est passé entre les mains du preneur, le tireur, ont respectivement les mêmes droits et se trouvent dans la même position que si le chèque eût été payé au véritable propriétaire.

Effet du barrement sur le porteur.

80. Celui qui prend un chèque barré portant les mots "non négociable," n'a et ne peut conférer un titre meilleur sur ce chèque que n'en avait la personne de qui il le tient.

Protection de la banque qui encaisse un chèque.

81. La banque qui de bonne foi et sans négligence de sa part, reçoit pour un client le paiement d'un chèque barré en blanc ou spécialement en son nom, alors que ce client n'a sur ce chèque aucun droit ou qu'un droit défectueux, n'encourt, pour le seul motif qu'elle a accepté le paiement, aucune responsabilité envers le véritable propriétaire du chèque.

QUATRIÈME PARTIE.

DES BILLETS PROMISSOIRES.

82. Un billet promissaire est une promesse pure et simple, faite par écrit par une personne à une autre, signée du souscripteur, par laquelle celui-ci s'engage à payer, sur demande ou dans un délai déterminé ou susceptible de l'être, une somme certaine de deniers, à une personne désignée ou à son ordre, ou au porteur.

Définition du billet promissaire.

2. Un écrit sous forme de billet payable à l'ordre du souscripteur n'est pas un billet dans le sens du présent article, à moins et jusqu'à ce qu'il ait été endossé par le souscripteur.

Endossement par le souscripteur.

3. Un billet n'est pas invalide pour la seule raison qu'il contient aussi le gage d'une garantie collatérale avec autorisation de la vendre ou aliéner.

Garantie collatérale.

4. Un billet qui est ou qui paraît être souscrit et payable en Canada est un billet intérieur ; tout autre billet est étranger.

Billets intérieurs et étrangers.

83. Un billet promissaire est incomplet tant qu'il n'a pas été remis au bénéficiaire ou au porteur.

Livraison nécessaire.

84. Un billet promissaire peut être souscrit par deux personnes ou plus, et elles peuvent s'engager conjointement, ou conjointement et solidairement, selon sa teneur.

Billets solidaires.

2. Un billet conçu en ces termes : "Je promets de payer," et portant la signature de deux personnes ou plus, rend les souscripteurs solidaires.

Formule du billet solidaire.

85. Un billet, payable sur demande, qui a été endossé doit être présenté au paiement dans un délai raisonnable du jour de l'endossement ; s'il n'est pas ainsi présenté, l'endosseur est libéré ; si, cependant, il a été, du consentement de l'endosseur, remis comme garantie collatérale ou pour continuer une garantie, il n'est pas nécessaire de le présenter au paiement tant qu'il est ainsi gardé comme garantie.

Billet payable sur demande.

2. Pour déterminer ce qu'on doit entendre par délai raisonnable, il faut tenir compte de la nature de l'effet, des usages du commerce et des circonstances particulières.

Délai raisonnable.

3. Un billet payable sur demande qui est négocié n'est pas considéré comme en souffrance, en vue d'affecter le droit du détenteur d'un vice de titre dont il n'a pas reçu

Vice non déclaré.

avis, par la seule raison qu'un délai raisonnable paraît s'être écoulé depuis son émission sans présentation au paiement.

Présentation au paiement.

86. Tout billet portant dans sa teneur mention qu'il est payable à un endroit désigné, doit être présenté au paiement à l'endroit désigné ; mais le souscripteur n'est pas libéré par l'omission de présenter le billet au paiement le jour de son échéance ; néanmoins, s'il a été intenté contre lui une poursuite ou action à raison de ce billet avant la présentation, la cour statuera sur les frais à sa discrétion. Si aucun lieu de paiement n'est spécifié dans le corps du billet, la présentation au paiement n'est pas nécessaire pour lier le souscripteur.

Responsabilité.

2. La présentation au paiement est nécessaire pour lier l'endosseur d'un billet.

Lieu de la présentation.

3. Le billet dont la teneur mentionne un lieu particulier pour le paiement doit être présenté en ce lieu pour lier son endosseur ; mais quand le lieu du paiement n'est indiqué que pour mémoire, la présentation en ce lieu est suffisante pour engager l'endosseur ; néanmoins, la présentation au souscripteur en tout autre lieu, si sous les autres rapports elle est suffisante, le sera également.

Engagement du souscripteur.

87. Le souscripteur d'un billet, en le souscrivant, —

(a.) S'engage à le payer suivant sa teneur ;

(b.) N'est pas admis à contester à un détenteur régulier l'existence du preneur et sa capacité à l'endosser dans le temps.

Application de la deuxième partie aux billets.

88. Sans déroger aux dispositions de cette partie et sauf ce qui est prévu par le présent article, toutes les dispositions du présent Acte relatives aux lettres de change s'appliquent aux billets, avec les modifications nécessaires.

Termes correspondants.

2. Pour l'application de ces dispositions, le souscripteur d'un billet est considéré comme étant dans la même situation que l'accepteur d'une lettre de change, et le premier endosseur d'un billet est assimilé au tireur d'une lettre de change acceptée payable à l'ordre de ce tireur.

Quelles dispositions ne s'appliquent pas.

3 Les dispositions suivantes, relatives aux lettres de change, ne s'appliquent pas aux billets, savoir :

(a.) La présentation à l'acceptation ;

(b.) L'acceptation ;

(c.) L'acceptation par intervention ;

(d.) La pluralité d'exemplaires.

4. Il n'y a pas nécessité de protester un billet étranger non-payé, si ce n'est pour la conservation de la responsabilité des endosseurs. Quant aux billets étrangers.

CINQUIÈME PARTIE.

Dispositions supplémentaires.

89. Une chose est réputée faite de bonne foi, dans le sens du présent Acte, quand celui qui la fait agit honnêtement, qu'elle soit faite avec négligence ou non. Ce qu'est la bonne foi.

90. Quand, en vertu du présent Acte, un effet ou un écrit doit être signé par quelqu'un, il n'est pas nécessaire qu'il soit signé de sa propre main, mais il suffit que sa signature soit écrite par un autre avec ou par son autorisation. Signature.

2. Dans le cas d'une corporation, quand, en vertu du présent Acte, un effet ou un écrit doit être signé, il suffit qu'il soit dûment revêtu du sceau de la corporation ; mais rien dans le présent article ne doit être interprété comme exigeant qu'une lettre de change ou un billet d'une corporation soit sous sceau. Quant aux corporations.

91. Quand, en vertu du présent Acte, le délai accordé pour faire quelque chose est de moins de trois jours, on ne doit pas compter pour le calcul du délai les jours non ouvrables. Pour l'application du présent Acte, sont "jours non ouvrables" les jours mentionnés en l'article quatorze du présent Acte ; tout autre jour est ouvrable. Calcul des délais.

92. Pour l'application du présent Acte, quand une lettre de change ou un billet doit être protesté dans un délai déterminé ou avant quelque acte de procédure, il suffit que la lettre ou le billet ait été noté pour le protêt avant l'expiration du délai ou l'ouverture de la procédure ; et le protêt formel peut être rédigé à toute époque postérieure et être daté du jour de la note. Quand la note équivaut au protêt.

93. Quand une lettre de change refusée à l'acceptation ou au paiement peut ou doit être protestée, et qu'on Protêt en l'absence d'un notaire.

ne peut obtenir les services d'un notaire à l'endroit où elle a subi un refus, tout juge de paix résidant en cet endroit peut présenter et protester cette lettre et faire toutes les notifications nécessaires; et il est revêtu de tous les pouvoirs d'un notaire à cet égard.

Frais.

2. Les frais de la note et du protêt d'une lettre de change, ainsi que les frais de port qu'ils entraînent, sont à la charge* du détenteur en sus des intérêts.

Honoraires.

3. Les notaires peuvent se faire payer les honoraires qui leur ont été accordés jusqu'ici dans chaque province.

Formules.

4. Les formules de la première annexe du présent Acte peuvent être suivies en notant ou protestant une lettre de change ou un billet et en en donnant avis. Une copie de la lettre ou du billet et des endossements peut être insérée dans les formules, ou la lettre de change ou le billet même peut y être annexé, et l'on peut faire en ce cas les changements nécessaires dans les formules.

Preuve de la
présentation,
du refus et de
l'avis.

5. Le protêt d'une lettre de change ou d'un billet, et toute copie qui en sera faite par le notaire ou le juge de paix, dans une action, font preuve *primâ facie* de la présentation et du refus d'acceptation ou de paiement, ainsi que de la signification de l'avis de cette présentation et du refus tels qu'énoncés dans le protêt.

Les mandats
de dividende
peuvent être
barrés.

94. Les dispositions du présent Acte relatives aux chèques barrés s'appliquent à un mandat pour toucher un dividende.

Abrogation.

95. Les dispositions mentionnées dans la deuxième annexe du présent Acte sont par le présent abrogées à compter du jour de l'entrée en vigueur du présent Acte, selon qu'il est mentionné dans la dite annexe.

Proviso.

Toutefois, cette abrogation n'affectera rien de ce qui a été fait ou toléré, ni aucun droit, titre ou intérêt acquis ou dévolus avant l'entrée en vigueur du présent Acte, non plus qu'aucune procédure judiciaire ou recours au sujet de la chose faite, ou de ce droit, titre ou intérêt.

Acte des
banques non
affecté.

2. Rien dans le présent Acte ni dans aucune abrogation qu'il effectue ne modifiera les dispositions de l'Acte des banques.

Actes de la
Grande-Bre-
tagne non
applicables.

3. L'Acte du parlement de la Grande-Bretagne passé en la quinzième année du règne de Sa Majesté le roi George III, intitulé : *An Act to restrain the negotiation*

* La version anglaise dit tout le contraire.

of Promissory Notes and Inland Bills of Exchange under a limited sum within that part of Great Britain called England, et l'Acte du dit parlement passé en la dix-septième année du règne de Sa dite Majesté, intitulé : *An Act for further restraining the negotiation of Promissory Notes and Inland Bills of Exchange under a limited sum within that part of Great Britain called England*, ne s'étendront ni ne s'appliqueront à aucune province du Canada, et les dits Actes n'auront pas, non plus, pour effet de nullifier aucune lettre de change, billet, traite ou ordre qui y ont été ou pourront y être faits ou mis en circulation.

96. Si un Acte ou un document se réfère à quelque disposition abrogée par le présent Acte, il sera interprété et produira effet comme s'il se référait aux dispositions correspondantes du présent Acte.

Interprétation avec d'autres actes.

97. Le présent Acte entrera en vigueur le premier jour de septembre prochain.

Entrée en vigueur.

PREMIÈRE ANNEXE.

FORMULE A.

NOTE FAUTE D'ACCEPTATION.

(Copie de la lettre de change et des endossements.)

Le jour de 18 , la lettre de change ci-dessus a été par moi, à la demande de , présentée pour acceptation à E. F., personne sur laquelle elle a été tirée, personnellement (ou à sa résidence, à son bureau ou lieu ordinaire de ses affaires), dans la cité (ville ou village) de , et j'ai reçu pour réponse : “ ”.

La dite lettre est en conséquence notée faute d'acceptation.

A. B.,
Notaire Public.

(Lieu et date)

18 .

Notification de la note précédente a été par moi dûment faite à { A. B., } le { tireur, } personnellement, le
 { C. D., } { endosseur, }
 jour de , (ou à sa résidence, à son bureau ou lieu ordinaire de ses affaires), à le
 jour de , (ou en déposant la dite notification, à lui adressée à , dans le bureau de poste de Sa Majesté en la cité [ville ou village] de , le
 jour de , et en payant les frais de port d'avance).

A. B.,

*Notaire Public.**(Lieu et date)*

18 .

FORMULE B.

PROTÊT FAUTE D'ACCEPTATION DE PAIEMENT D'UNE LETTRE
 DE CHANGE PAYABLE GÉNÉRALEMENT.

(Copie de la lettre de change et des endossements.)

Ce jour de , en l'année 18 ,
 je, A.B., notaire public pour la province de
 résidant à , dans la province de , à la de-
 mande de
 ai exhibé la lettre de change originale, dont une vraie copie
 est ci-dessus reproduite, à E. F., { le tiré, } person-
 { l'accepteur, }
 nellement, (ou à sa résidence, à son bureau ou au lieu
 ordinaire de ses affaires), à , et, parlant à
 lui-même, (ou à sa femme, son commis, ou son serviteur,
 etc.) j'ai demandé { l'acceptation } de la dite lettre de
 { le paiement }
 change, à laquelle demande { il } a répondu : “
 { elle }

”
 C'est pourquoi, moi, le dit notaire, à la demande susdite, j'ai protesté et proteste par ces présentes contre l'accepteur, le tireur et les endosseurs (ou le tireur et les endosseurs) de la dite lettre de change, et autres parties à la dite lettre de change, ou y intéressées, pour tout taux de

change, de rechange, et tous frais, dommages et intérêts, présents et futurs, faute { d'acceptation } de la dite lettre de change. { de paiement }

Le tout attesté sous mon seing.

(Protesté en double.)

A. B.,

Notaire Public.

FORMULE C.

PROTÊT FAUTE D'ACCEPTATION OU DE PAIEMENT D'UNE LETTRE DE CHANGE PAYABLE EN UN LIEU DÉTERMINÉ.

(Copie de la lettre de change et des endossements.)

Ce jour de , en l'année 18 , je, A. B., notaire public pour la province de résidant à , dans la province de , à la demande de , ai exhibé la lettre de change originale dont une vraie copie est ci-dessus reproduite, à E. F., { le tiré, } à , étant l'endroit spécifié où la dite lettre est payable, et là, parlant à lui-même (ou à sa femme, son commis, ou son serviteur, etc.,) j'ai demandé { l'acceptation } de la dite lettre de change, { le paiement } à laquelle demande { il } a répondu : " elle " ."

C'est pourquoi, moi, le dit notaire, à la demande susdite, j'ai protesté et proteste par ces présentes contre l'accepteur, le tireur et les endosseurs (ou le tireur et les endosseurs) de la dite lettre de change, et toutes autres parties à la dite lettre, ou y étant intéressées, pour tous taux de change, de rechange, et tous les frais, dommages et intérêts, présents et futurs, faute { d'acceptation } de la dite lettre. { de paiement }

Le tout attesté sous mon seing.

(Protesté en double.)

A. B.,

Notaire Public.

C'est pourquoi, moi, le dit notaire, à la demande susdite, j'ai protesté et protesté par ces présentes contre le souscripteur et les endosseurs du dit billet, et toutes autres parties au dit billet, ou y intéressées, pour tous frais, dommages et intérêts, présents et futurs, faute de paiement de ce billet.

Le tout attesté sous mon seing.

(Protesté en double.)

A. B.,
Notaire Public.

FORMULE F.

PROTÊT FAUTE DE PAIEMENT D'UN BILLET PAYABLE EN
UN LIEU DÉTERMINÉ.

(Copie du billet et des endossements.)

Ce jour de , en l'année 18 ,
je, A. B., notaire public pour la province de
résidant à , dans la province de , à la
demande de , ai exhibé l'original du billet promissoire
dont une vraie copie est ci-dessus reproduite, à
le souscripteur, à , lieu spécifié où le dit billet est
payable, et là, parlant à , j'ai demandé le paiement du
dit billet ; à laquelle demande il a répondu : “ ”

C'est pourquoi, moi, le dit notaire public, à la demande
susdite, j'ai protesté et protesté par ces présentes contre
le souscripteur et les endosseurs du dit billet, et toutes
autres parties au dit billet, ou y intéressées, pour tous
frais, dommages et intérêts, présents et futurs, faute de
paiement du dit billet.

Le tout attesté sous mon seing.

(Protesté en double.)

A. B.,
Notaire Public

FORMULE G.

NOTIFICATION NOTARIÉE D'UNE NOTE, OU D'UN PROTÊT
FAUTE D'ACCEPTATION, OU D'UN PROTÊT FAUTE DE
PAIEMENT D'UNE LETTRE DE CHANGE.

(Lieu et date de la note ou du protêt.)

Premièrement.

A. P. Q. (le tireur),
à

Monsieur,

Votre lettre de change pour \$
datée à , le , sur E.F., en faveur
de C. D., payable à jours de { vue } a été ce jour, à
la demande de , dûment { date } notée
faute { d'acceptation. } par moi
de paiement. }

A. B.,
Notaire Public.

(Lieu et date de la note ou du protêt.)

Deuxièmement.

A. C. D., (endosseur),
(ou F. G.)
à

Monsieur,

La lettre de change de P. Q., pour \$
datée à , le , sur E. F., en votre faveur, (ou
en faveur de C. D.,) payable à jours de { vue }
et endossée par vous, a été, ce jour, à la demande de ,
dûment { date } notée
{ protestée } par moi faute { d'acceptation. }
{ de paiement. }

A. B.,
Notaire Public.

FORMULE H.

NOTIFICATION NOTARIÉE DE PROTÊT FAUTE DE PAIEMENT
D'UN BILLET.

(Lieu et date du protêt.)

A

Monsieur,

Le billet promissoire de P. Q., pour \$,
daté à , le

payable à { jours } de date à { vous }
 { mois } { E. F. }
 { le— }

dossé par vous, a été ce jour, à la demande de
dûment protesté par moi faute de paiement.

A. B.,

Notaire Public.

FORMULE I.

ACTE DE SIGNIFICATION NOTARIÉE D'UNE NOTIFICATION DE
PROTÊT FAUTE D'ACCEPTATION OU DE PAIEMENT D'UNE
LETTRE DE CHANGE OU FAUTE DE PAIEMENT D'UN BIL-
LET (qui fera suite au protêt).

Et subséquemment, moi, le notaire public susdit, qui ai
protesté, j'ai dûment signifié la notification, en la forme
prescrite par la loi, du protêt qui précède faute

{ d'acceptation }
{ de paiement } de la lettre de change (ou du billet) pro-

testé à { P. Q. } le { tireur }
 { C. D. } { endosseur }

personnellement, le
jour de , (ou à sa résidence, son bureau ou lieu
ordinaire de ses affaires,) à , le jour de

, (ou, en déposant la dite notifi-

cation adressée au dit { P. Q. } à , au bureau de poste
 { C. D. }

de Sa Majesté, en la cité [ville ou village] de , le
jour de , et en payant les frais

de port d'avance).

En foi de quoi, j'ai, les jour et an mentionnés en der-
nier lieu, à susdit, signé ces présentes.

A. B.,

Notaire Public.

FORMULE J.

PROTÊT PAR UN JUGE DE PAIX (OU IL N'Y A PAS DE NOTAIRE) FAUTE D'ACCEPTATION D'UNE LETTRE DE CHANGE, OU DE PAIEMENT D'UNE LETTRE DE CHANGE, OU D'UN BILLET.

(Copie de la lettre ou du billet et des endossements.)

Ce jour de , en l'année 18 ,
moi, N. O., l'un des juges de paix de Sa Majesté pour le
district (ou le comté, etc.,) de dans la pro-
vince de , résidant au (ou près du) vil-
lage de , dans le dit district, vu qu'il
n'y a aucun notaire public pratiquant dans ou près le
dit village, (ou toute autre cause légale,) j'ai à la deman-
de et en présence de de moi bien
connu, exhibé l'original { de la lettre de change } dont vraie
du billet }

copie est ci-dessus reproduite, à P. Q., le { tireur
accepteur
souscripteur }
personnellement, (ou à sa résidence, son bureau, ou au
lieu ordinaire de ses affaires,) à , et,
parlant à lui-même, (ou à sa femme, son commis ou son
serviteur, etc.,) j'en ai demandé { l'acceptation, } à laquelle
le paiement, }
demande { il } a répondu : "
elle }

C'est pourquoi, moi, le dit juge de paix, à la demande
suscitée, j'ai protesté et par ces présentes proteste contre
{ le tireur et les endosseurs } du dit
{ le souscripteur et les endosseurs } de la dite
{ l'accepteur, le tireur et les endosseurs }
{ billet } et contre toutes les autres parties
{ lettre de change }
{ au dit billet } ou y étant intéressées, pour
{ à la dite lettre de change } tout taux de change, de rechange, et tous les frais, dom-
mages et intérêts, présents et futurs, faute
{ d'acceptation de la dite lettre de change. }
{ de paiement du dit billet. }

Le tout est par le présent attesté sous la signature du
dit (le témoin) et sous mes seing et sceau.

(Protêté en double.) (Signature du témoin.)

(Signature et sceau du J. P.)

DEUXIÈME ANNEXE.

DISPOSITIONS ABROGÉES.

Provinces et chapitre.	Titre de l'acte et partie abrogée.
Canada : Chap. 123, Statuts Revisés.....	Acte concernant les lettres de change et les billets à ordre.—L'acte entier.
Province de Québec : Code Civil du Bas-Canada	Articles 2,279 à 2,354, tous deux inclusivement. (*)
Nouvelle-Ecosse : Statuts Revisés, troisième série, chap. 82	Des lettres de change et billets à ordre.—Art. 1.—Les autres articles de ce chapitre ont été antérieurement abrogés.
Nouveau-Brunswick : Statuts Revisés, chap. 116	Des lettres de change, billets et droits d'action—Art. 2. Les autres articles de ce chapitre ont été antérieurement abrogés.
30 Vict., 1867, chap. 34.....	Acte à l'effet de modifier le chapitre 116 des Statuts Revisés, "Des lettres de change, billets à ordre et droits d'action;" et aussi l'Acte 12 Victoria, chapitre 39, s'y rapportant.—Art. 1.

(*) Sauf en tant que ces articles, ou quelque'un d'entre eux, ont trait à la preuve à l'égard des lettres de change, chèques et billets.

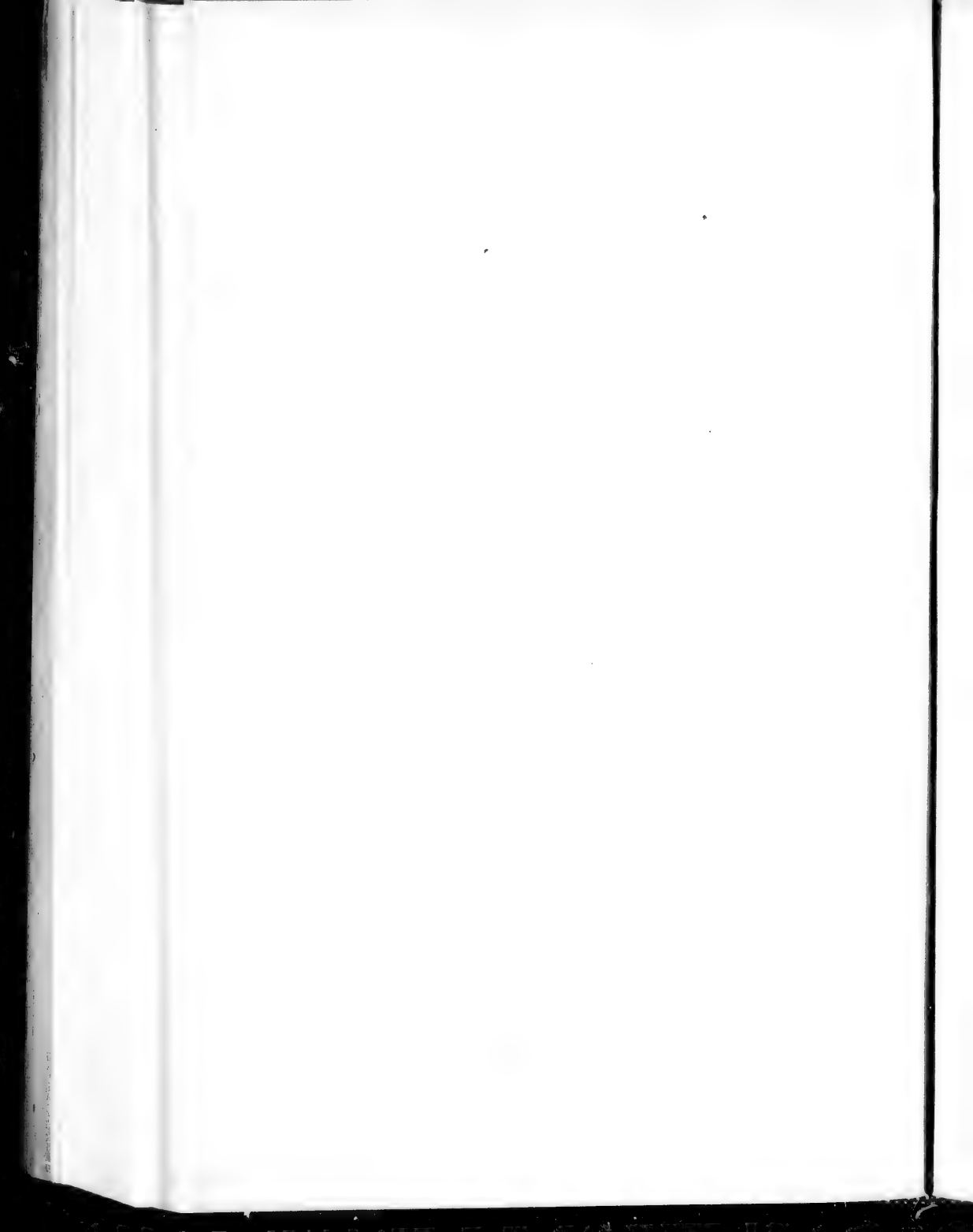


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(REPRODUITE DES STATUTS DE 1890.)

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COMMONS DEBATES, 1889.

BILLS OF EXCHANGE, CHEQUES AND PROMISSORY NOTES.

4th February, 1889

Sir JOHN THOMPSON moved for leave to introduce Bill (No. 5,) relating to bills of exchange, cheques and promissory notes. He said: The object of this Bill is to render uniform in almost every particular the laws throughout the Dominion with respect to these contracts. The law under this Bill will be uniform in every particular, except as regards statutory holidays, in respect of which special provision is to be made as regards the Province of Quebec. I may say that the Bill is principally the codification of the existing law relating to bills, cheques and promissory notes, and that the changes which are made in our law on these subjects are in the direction of making it uniform with the English Statute law. The changes thus made will render our law similar to the English law, excepting in two or three unimportant particulars, and the principal one of these is the preservation of the present system of payment when the last day of grace falls on a Sunday or statutory holiday. Our existing provision is that in such a case, the bill or note shall be payable on the following day, while under the English statute it is payable the preceding day. In that respect, this Bill proposes to continue our present system. I may mention, briefly, for the information of the House, the alterations in the common law which the Bill proposes to make. The first is that:

"Unless the contrary appear on the face of the bill, the holder may treat it as an inland bill."

I presume it will be more convenient to the House that I should merely mention the changes without making any comments or entering into any explanations. The next is that:

"A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being."

The next feature of that kind in the bill is that:

"When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable."

"A bill is payable to bearer which is expressed to be so payable, or on which the only or last endorsement is an endorsement in blank.

"A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable."

Further changes are :

"Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue, or acceptance, and the bill shall be payable accordingly.

"Provided that where the holder in good faith and by mistake inserts a wrong date, and in every case where a wrong date is inserted if the bill subsequently comes into the hands of a holder in due course, the bill shall not be voided thereby, but shall operate and be payable as if the date so inserted had been the true date.

"The drawer of a bill and any endorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he may think fit.

"When a bill payable after sight is dishonored by non-acceptance and a drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

"Where a bill purports to be endorsed conditionally, the condition may be disregarded by the payer, and payment to the endorsee is valid whether the condition has been fulfilled or not.

"A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.

"Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and endorsers.

"Presentment in accordance with these rules is excused, and a bill may be treated as dishonored by non-acceptance, where the drawee is dead or bankrupt or insolvent, or is a fictitious person, or a person not having capacity to contract by bill; or where, after the exercise of reasonable diligence, such presentment cannot be effected; or where, although the presentment has been irregular, acceptance has been refused on some other ground."

There is a further provision that :

"Where a qualified acceptance is taken, and the drawer or an endorser has not explicitly or impliedly authorized the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or endorser is discharged from his liability on the bill. The provisions of this sub-section do not apply to a partial acceptance whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance. When the drawer or endorser of a bill receives notice of a qualified acceptance and does not within a reasonable time express his dissent to the holder, he shall be deemed to have assented thereto."

There are also the following provisions :

The return of a dishonored bill to the drawer or an endorser is, in point of form, deemed a sufficient notice of dishonor.

"When the acceptor of a bill is or becomes the holder of it, at or after its maturity, in his own right, the bill is discharged.

"When the holder of a bill, at or after its maturity, absolutely or unconditionally renounces his rights against the acceptor, the bill is discharged. The renunciation must be in writing unless the bill is delivered up to the acceptor.

"Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorized or assented to the alteration, and subsequent endorsers : provided that, where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor.

"Subject to the provisions of this Act, where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment, as between him and the banker, to have the cheque paid, and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid.

"Where, by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority."

And in the case of a corporation it is provided that it is sufficient if the instrument is sealed with the corporate seal, but it is not required that the seal of the corporation should be affixed. It is further provided that :

"Where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the Bill has been noted for protest before the expiration of the specified time, or the taking of the proceeding ; and the formal protest may be extended at any time thereafter as of the date of the noting. Where a dishonored bill or note is authorized or required to be protested and the services of a notary cannot be obtained at the place where the bill is dishonored, any justice of the peace, resident of the place, may present and protest such bill or note and give all necessary notices, having all the necessary powers of a notary in respect thereto."

It is also provided that this Act shall not come into force until the 1st September next, in order that its provisions may be fully known by time being given for the publication of the statute, as well as for the information which will at once be desired as to the changes in the present law. These are the changes which it is proposed to make in the law. Some of them, as the House will have observed, are either declaratory of the common law, or partially so, or they ratify the practice of the mercantile community in respect to these matters. One of the change which it is necessary to make

in the direction of uniformity is in relation to the Province of Quebec, and this bill will require a protest in the case of foreign bills only, making the Quebec law uniform with that of the other Provinces. I may further observe that the Bill proposes to establish in Canada the English provisions in respect to crossed cheques.

Motion agreed to, and Bill read the first time.

19th February, 1889.

Sir JOHN THOMPSON moved second reading of Bill (No. 5) relating to bills of exchange, cheques and promissory notes. He said: I explained the object of this Bill so fully, in introducing it to the House, that I presume it will be unnecessary that I should speak at any length now as to the changes it will make. My explanation will be found on page 16 of *Hansard*. The Bill is undoubtedly one of considerable importance, although the changes it makes are not very sweeping or radical. It aims at a consolidation or codification of the laws relating to bills of exchange and promissory notes in the different Provinces of Canada, with the view of assimilating as far as possible the laws relating to these subjects in the several Provinces. I have taken steps to have the Bill, since it was introduced, circulated as widely as possible among those persons carrying on business in Canada who are likely to be most interested in the subject, and among banks, boards of trade and chambers of commerce in the different localities. Suggestions have been and are still being made as to amendments which it may be proper to make when we go into committee on the Bill. I move the second reading now, but wish to explain that it is not my intention to move the Bill into committee until ample time has been given to hear from the classes in different portions of the Dominion whom it more particularly affects.

Mr. MILLS (Bothwell). I am very glad to hear that the hon. the Minister of Justice does not at present intend to press this Bill further than the second reading. It is in itself a very important Bill. It attempts to consolidate the laws relating to bills of exchange and promissory notes. I notice, in looking over a portion of the Bill, for I have not had the opportunity yet of going over the whole of it, that if it were carried in its present form it would make radical changes in the law in a good many particulars. I dare say, if I had the opportunity of going through the whole Bill, I would find other changes than those which have occurred to me, and I hope

the hon. gentleman will not press the Bill for some time, if at all this Session. If we are to codify the laws—and I admit it is important that we should do so if it can be done successfully—with regard to bills of exchange and promissory notes, we ought to take care not to alter the law in any particular in which it is not deliberately intended to be altered; and I am quite sure the Bill as it stands would produce alterations other than those the hon. gentleman contemplates.

Mr. LANGEIER (Quebec). I would like to ask the hon. gentleman if it is his intention to codify, if not this Session, at any Session, the commercial laws of the Dominion?

Sir JOHN THOMPSON. It is not my intention to make any effort of that kind this Session. I have not formed any definite design in that respect.

Sir RICHARD CARTWRIGHT. Does the hon. gentleman propose to send this Bill to a special committee—the Committee of Banking and Commerce—which in some respects would be a good body to discuss it? Or does he propose to refer it simply to the general Committee of the House?

Sir JOHN THOMPSON. The Committee of the Whole House.

Sir RICHARD CARTWRIGHT. Of course it can be discussed there but I would suggest to the hon. gentleman that, as far as the convenience of discussion goes, and the convenience of allowing bankers and all others interested to be heard, that it should be referred to the Committee of Banking and Commerce. On one or two occasions we have dealt with Bills of a somewhat similar character in that fashion; and although I am aware that the province of a special committee is more particularly to deal with private Bills than measures introduced by the Government, still it might be better for all parties concerned that bankers and merchants, who are more particularly interested in this Bill, should be allowed to appear and be heard before a committee, which cannot be done if the Bill is referred to the Committee of the Whole House.

Sir JOHN THOMPSON. There are no doubt advantages in the course recommended by the hon. gentleman. Still that matter has had my attention, and I think it will be better to refer the Bill to a Committee of the Whole House, and then, if any special reasons arise, it may be referred to a special committee.

Motion agreed to, and Bill read the second time.

21st March, 1889.

Sir JOHN THOMPSON moved that the House resolve itself into Committee on Bill (No. 5) relating to bills of exchange, cheques and promissory notes.

Mr. JONES (Halifax). The First Minister has expressed a desire that the House should get through the business before Easter. This Bill which I have no doubt is a very proper one, is not one which there seems to be much immediate necessity for, and it will undoubtedly take a very considerable time in passing through committee. I would suggest to the Minister of Justice whether it would not be advisable to allow it to stand over to another Session, and take it up at an early part of that Session.

Sir JOHN A. MACDONALD. I think, notwithstanding this Bill is on the paper we can get through by Easter. If we put it off till next Session, we may not be able to get through before Easter of next year, as there may be a great deal of important business.

Mr. MILLS (Bothwell). I think the suggestion of my hon. friend from Halifax (Mr. Jones) is a very good one. This is a very important Bill, because it is practically consolidating the law in respect to promissory notes. After looking over a portion of the Bill—and I have not had time to study it throughout—I notice that, in many respects, it would vary the law very materially, and I think that most gentlemen on this side of the House who are interested in subjects of this sort would like to have an opportunity, at their leisure, between this and the next Session, of comparing this Bill carefully with the law as it stands and with the various judicial decisions.

Sir JOHN A. MACDONALD. The House has had this Bill before it for more than a month.

Mr. MILLS (Bothwell). But the House has been busy.

Sir JOHN A. MACDONALD. Not more than in other Sessions.

Mr. MILLS (Bothwell). That is true, but this Bill requires a great deal of attention, because it is really an attempt at a code.

Sir JOHN THOMPSON. I think this will be found to be the simplest Bill on the paper, because it is almost an exact transcript of the English Act and our own law. If there is any objection to going on with this Bill, I do not understand under what circumstances any Bill can be introduced hereafter with a view to its consideration during the same Session. The Bill was not only announced in the Speech from the Throne, but it was introduced on the first available day. It has stood on the paper for six weeks, and I think plenty of time has been given for its consideration. I have taken pains to

distribute it through the country, and I cannot see any reason for postponing it.

Mr. MITCHELL. I agree with the views which have been expressed on this side of the House, that this Bill should be allowed to stand over, in order to allow the country to consider it. The Minister of Justice has amended the Bill very considerably since its introduction, and he has issued copies in galley form, and very few members, I think, have their copies to refer to. I have not been able to get extra copies. Bankers, and brokers, and notaries have applied to me for copies, but I had only my own, and one which was given me by a friend. Now, we are asked to go into Committee on this Bill, without having copies of the actual Bill which the hon. gentleman proposes. This is practically, as my hon. friend has said, a commercial code for this country, and I do not think we should deal in a hasty or summary manner with a Bill of this nature, voluminous in its character, and very important in the way in which it affects commercial and trade relations. If the hon. gentlemen desire to get through before Easter, I think they should consider the propriety of allowing the Bill to be printed, and to go into the hands of members, and to go to the various commercial institutions of the country. I do not say this from any desire to oppose the reconstruction of the law in regard to this matter; but it is not a safe principle that, because it is an exact transcript of the English law on the subject, as the hon. gentleman says, that we should accept it. There are many things which take place in England, in the way of legislation, which are not at all fitted to a new country, such as Canada is, and this Bill should not be rushed through the House. I understand that we have very little more than 18 working days before Easter, with a mass of legislation before us, with the Estimates, nine-tenths of which have yet to be passed, with the Supplementary Estimates, and the railway legislation which is before us. I do not see how we can get through if we take up a Bill like this, which will occupy a great deal of time.

Mr. EDGAR. I entirely agree with the general objects of this Bill, and, I think, if it becomes law, it will greatly facilitate commercial transactions and, also, the work of the legal profession; but this is largely a codification of the law, and the House will recollect that, when we consolidate the Statutes, and when we have any important commercial piece of legislation, such as an Insolvency Law, we refer them to Special Committees who can give some attention to the minute and important details of that class of legislation. Now, the Minister of Justice will be the first, I think, to admit that the Committee of the Whole of this House is not exactly the place to give calm and careful consideration to the complex details of a commercial Bill like

this. It has not been referred to any Committee, not even the Committee on Banking and Commerce, although I think that would be much too large to deal with it properly. The measure itself may satisfy the Minister of Justice, it may satisfy the very few members of this House who have not had an opportunity to study it, but most of the commercial and legal gentlemen of this House who can study the question will be utterly unable to do it in the Committee of the Whole. The confusion incident to such work we all understand, and I do press upon the Government, apart from the question of the lateness of the Session, to consider whether it would not be far better to have this measure referred to a Committee, either this Session, or, if it is too late, to a sub-Committee.

MR. WELDON. (St. John). This Bill being of a nature of a codification, is one which requires very careful examination in Committee. The hon. Minister of Justice well knows that a codification, when you introduce strict statutory provisions, requires to be done very carefully, and I think it would be well to refer it to a sub-Committee, as suggested by the hon. member for Ontario (Mr. Edgar). Indeed I do not think the country would suffer very much if the Bill was allowed to remain over until next Session. In the meantime the members would have an opportunity of exchanging views with the bankers and other persons interested. No doubt one great and very proper object of this Bill is to render the law uniform throughout the Dominion, but while I would like to see that done, I think the necessity is not so great but that the Bill might be left over until another Session. I think that is the general feeling on both sides of the House, because if we go into this Bill now, every section would have to be carefully scanned in order that the law might be put in such a shape that it would create no difficulty, and no great change in the present system. I also agree with the remarks of the hon. member for Northumberland (Mr. Mitchell), that in following the English statute we have to be very careful, because the condition of affairs in England is so different from ours that frequently in following too slavishly English legislation, we are apt to pass laws which we find very difficult of application.

MR. McMULLEN. I wish to remark that there has been placed in my hands a reprint of Bill No. 5, which was placed in the hands of the House some three or four weeks ago. I understand that a number of changes have been made in the reprint; and I also understand that it has been placed in the hands of the legal representatives in the House, while non-professional men, like myself, have not been favored with a copy. Now, if the important matters dealt with by this Bill are to be attended to only by the legal representatives in

this Chamber, and that men from the rural districts, non-professional men, are not supposed to be worthy of receiving a copy of the Bill, I want to know it. I claim as a representative of a constituency that I have a right to be placed in possession of a copy of this Bill, as well as any other man in this House. I know there are other members who sit around me who have not received a copy. Now, I claim it is nothing but right, before you leave the Chair, and before this House goes into Committee on this Bill, that every member should have a copy of it. Changes have been made since it was first printed, and it is unfair that only professional men should have an opportunity of examining these changes. I applied to the distributing department for one of these reprints, and was told there were none to be had. My esteemed friend who sits besides me has obtained a copy by sending over to the Minister of Justice and requesting one. I suppose if anyone else wants to get a copy, he will have to send his compliments in a polite manner to the Minister of Justice in order to get it. This is an exceedingly important Bill, and it is one of a class that affects everyone in the country. The poor man who does an ordinary business of \$50 or \$100 a year, is just as much interested in the provisions of this Bill as another man who does his business by millions. I have no doubt that legal men are perhaps able to deal more satisfactorily with the peculiar clauses of this Bill than ordinary men; but sometimes other men that are not even possessed of a legal mind, may make suggestions with regard to the provisions of the Bill, that are perhaps even more valuable than the suggestions of a lawyer.

Mr. PATERSON (Brant). There is no blame attaching to the Minister for not introducing his Bill at a sufficiently early date. He did that, and it has been in the hands of members. The Minister says that he has received many suggestions in response to copies sent out, and that in deference to the opinions expressed, he has considerably altered the Bill; that fact shows that the Bill when first introduced was not entirely satisfactory. Now, it is not from a sense of hurt dignity that I speak, but although I am somewhat interested in this Bill as a commercial man, I have not seen any of the proposed changes at all. I agree with my hon. friend who spoke last that while in a great many matters legal gentlemen in this House are better fitted to deal with them than non-professional men, still, I am proud that my hon. friend has paid me the compliment of supposing that while it is necessary for legal gentlemen to have an opportunity of studying the amendments beforehand, he thinks a commercial man may take them up on the spur of a moment. From all that I can hear there has been no particular demand for this Bill, and it

does seem to me that a Bill so important as this, and in which the Minister has discovered by enquiries that several amendments must be made, and seeing that no interest is suffering, perhaps it would be advisable to take the suggestion that was made, and let the representatives of the people go to their homes, and, during the course of the year, ascertain the opinion of their constituents upon the measure. The boards of trade and bankers will consult in regard to it, and we shall be able to obtain a more perfect Bill. I do not desire to say more, nor do I desire to push objections from this side of the House in regard to it, but I hope the Minister will see that the suggestions offered are reasonable and perhaps in the public interest.

Mr. MILLS (Bothwell.) As a matter of order, we have not this Bill before us at all; we cannot have it before us except informally. The Minister of Justice introduced another Bill, and that is the one under consideration. The hon. gentleman may have put this before us merely to show what changes he proposes, but this Bill could not be before us formally. He would have to begin again if he desired to put this Bill before the House.

Sir JOHN THOMPSON. I am sure no one would be more indisposed than I would be to force a Bill on the attention of the House if the House were not ready for it. If it was suggested that there was a strong feeling in the country against the principle of the Bill, against the policy of consolidating the laws respecting bills of exchange, I would not desire to press it.

Mr. MILLS (Bothwell). That is not so.

Sir JOHN THOMPSON. If any one were able to say that this subject being committed to us by the British North America Act, twenty-one years afterwards was too early a period to legislate upon it, I would hesitate about pressing the Bill upon the attention of the House. Or if any one could suggest an earlier period of the Session at which it could possibly have been laid before the House, I might think something had occurred to delay the Bill this year; but I have listened to the suggestions of the hon. gentlemen opposite as regards the reasons for letting it stand until next year, and I fail to see in what Session of this Parliament such a Bill can ever be considered if not now. But least of all did I expect to be reproached because, having intended to propose certain amendments in Committee of the Whole, as we always do in reference to a Bill of any importance, especially a Bill of any length, I committed the indiscretion of announcing pretty generally to the House the nature of the amendments which I intended to submit. I have enjoyed the advantage of conferring with different gentlemen occupying seats in this House, who take an interest in this subject, who are more or less entrusted

with or at all events are acquainted with the interests of bankers and merchants in so far as they might be affected by this Bill, and to those gentlemen I thought it only proper and fair to give an intimation of the kind of amendments I had to propose in Committee of the Whole. That would not have stood in my way if the House had gone into Committee, and I had moved these amendments without notice in manuscript, and had the Bill afterwards reprinted. As regards the hon. member for North Wellington (Mr. McMullen), I have only to remind him of what he probably knows already, that this Bill was read a second time and was laid on his desk five weeks ago. It was read a second time, printed in English and French on 5th February, which is considerably more than five weeks ago, and, under these circumstances, I hope the hon. gentleman, if he takes any umbrage at the circumstance of my having distributed something else, will lay it aside and give his attention to the Bill that has been five weeks on his desk. The Bill will be reprinted before the third reading. What I ask the House to do to-night is not to consider simply at the outset that this is a large Bill and a somewhat abstruse subject, but to take up the Bill and pass it so far as the Committee is prepared to do so to-night. I think it will be found that we will make substantial progress with the Bill. If there be any amendment which I propose that the member for North Wellington (Mr. McMullen) or anyone else is not prepared for or does not understand, it will stand over until there is ample opportunity to consider it; but I ask the House to go into Committee, and pass some of these clauses, and we can make substantial progress and not delay the prorogation of the Session. I have done the best I could to make the nature of this bill as well known as possible, and I have received information from all parts of the Dominion, from business men, boards of trade, banking institutions and private persons intimating that their opinion is favorable to the principle of the Bill—to the proposal that we should codify and make uniform as far as can possibly be done the laws relating to this important subject all through the Dominion; and I think that, inasmuch as the principle is accepted and there are no abstruse details in the Bill and the changes in the law are very slight and very few, the sooner the codification is accomplished the better, and I can promise no better means of disseminating the information or making the provisions better known to the House next Session than I have adopted this Session.

MR. LAURIER. I do not think the hon. gentleman has rightly apprehended the spirit of the objections that have come from this side of the House. There is certainly no fault to be found with the

hon. gentleman in regard to the introduction of this Bill and pressing it forward; but the objection raised by the hon. member for Northumberland (Mr. Mitchell) is one which I think cannot be successfully met. It is that the desire prevails on both sides of the House, as was expressed the other day by the First Minister, to have prorogation before Easter. Now, there are not more than about twenty two or twenty-three working days, and considering that we have part of the Estimates, the Supplementary Estimates for the current year and Supplementary Estimates for next year, and we have already on the paper nineteen different subjects to go through, it is almost impossible to prorogue before Easter if this measure is taken up and considered. The hon. Minister has asked at what Session this subject can be taken up, if not at this Session. Perhaps next Session Parliament will be called at such a time that Easter will not happen to fall about the tenth week of the Session. If we do not prorogue before Easter, the Session may be prolonged for some time afterwards. There is, however, a commendable desire to prorogue before Easter. We on this side of the House desire to do so, and we will help the Government in that respect; but I am afraid if the hon. gentleman persists in pushing this Bill, which is a heavy one, we will not realize our hope. No doubt the Bill is an essential one, but it is not an urgent one, and the community can wait twelve months without suffering.

MR. MITCHELL. I do not think I can put the case any better than the hon. gentleman who has just resumed his seat has done, and perhaps not quite so well; but I endorse every word he has uttered in relation to the general desire for an early prorogation, and I think both sides of the House will agree in that sentiment. I agree that if we take up this Bill, a Bill every line of which involves a lawsuit, and there is a great many lines in the Bill, there may be doubt as to proroguing before Easter; and as it is one which requires the greatest consideration, I think it is unwise for the Government to press the consideration of it at this stage of the Session, which everyone expects to be short. The hon. Minister has said that if he thought the principle of the Bill did not meet with the approbation of the country at large, he would not press it. Every one who has expressed their opinions about the Bill admit that its principle will be approved by the country at large, but what I object to is this, that this Bill which the hon. gentleman has laid before the House at the very earliest stage he could lay it before the House—and nobody blames him for delay—but that he has at a subsequent stage, made amendements to the Bill, which, as he says himself, have been the result of correspondence with bank-

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ers, brokers, notaries, boards of trade and individuals of the general public, and which amendments we have no notice of. The fact of those representations being made to him shows that important interests are involved and that the public are anxious about the measure. I believe that it is almost a certainty that discussions of a very extended and lengthy character will arise upon this Bill. What I object to particularly, and what my hon. friend the Minister does not refer to sufficiently in his answers to the objection, is that the public have endeavored to get information about the amendments, and that they have been unable to obtain it. I have sent for those amendments every day last week to the Distribution Office, but I was unable to get them. The only copy I could get was one sent me by the hon. gentleman himself and which I sent away to a person who had asked me for it. On every occasion on which I visited Montreal during this Session I have had people asking me to get a copy of this Bill for them, and since this amended Bill has come in enquiries for the amended Bill have been made over and over again. Nobody denies the necessity of codifying our laws in this respect, but none will pretend that the question of dealing with promissory notes, the manner of meeting them, their dates, the liability of individuals, the liability of partners and the course pursued by banks, and matters of that kind, does not involve an important principle and that therefore time should be given for its consideration. While the country does approve of the codification of the laws controlling the financial affairs of the country, yet, before old lines of business are disturbed, and new issues created, the people interested have a right to feel that they fully understand the changes that are to be made, and they should have ample time to deliberate on and consider them. I repeat again, what has been so frequently stated from this side of the House, that it is important that a Bill of this nature should receive the most ample consideration, and that gentlemen who sit here representing the public should have a full opportunity of consulting the people as to the provisions of this Bill. There is no measure which could be brought before this House on which so much correspondence could arise, and on which so many suggestions could be obtained from people interested. If hon. gentlemen wish to close the Session at the time they say, and we are all anxious that they should, they should have this Bill reprinted, in order that the public may be aware of the changes which are proposed, and defer a consideration of the Bill to an early stage of next Session. I believe, that this will meet with the approval of the country, and I am sure it will meet with the approval of the House.

Sir JOHN THOMPSON. I think that the request I have made is a reasonable one, notwithstanding the repetition of the objections for our making progress with the Bill. The fact that the Bill was a recast in galley form, and the amendments I intended to make embraced in it, has given the hon. gentlemen an idea that the Bill has been entirely remodelled. Such is not the case. What I propose is that the Bill should proceed, and, if we think there are such changes introduced in the galley form as will require a reconstruction of the Bill or a protracted discussion, I am quite willing that such a clause should stand over, and I am ready to listen to any representations as to the necessity for making these changes at all. So far as this being a Bill that will involve serious changes in the present system the hon. gentleman will be surprised when he finds out, as I am sure he will, how much there is of it which is the present law, and a law known to every one interested in the business.

Mr. MITCHELL. The point I make is that as there are important changes proposed we should have an opportunity of sending copies of that Bill to the business men of the country, in order that they may discover and point out to us what changes are desirable, and how far the changes that are suggested are such as are required by the needs of the case. The members of the House ought certainly to have notification of those changes before they go into the consideration of the Bill.

Motion agreed to, and House resolved itself into Committee.

(In the Committee).

On section 2,

Mr. WELDON (St. John). What is "notification?" I do not quite understand that.

Sir JOHN THOMPSON. The hon. gentleman will see that actual acceptance on the face of the bill may be waived.

Mr. WELDON (St. John). I can understand it if the acceptance had been, as it can be sometimes, by letter. Acceptances are not necessary under our present law, but now the acceptance must be on the face of the bill itself.

Sir JOHN THOMPSON. In section 21 there is a provision as to how the acceptance is to be made. The acceptance implies not only the writing of the name on the face of the bill, but delivery.

Mr. McMULLEN. I want to know what acceptance by delivery means? Does it merely mean presenting a draft at a man's office or to his servant?

Sir JOHN THOMPSON. If a bill should be drawn on the hon. gentleman, and he desires to accept it, his acceptance is not completed

by his merely writing the word "accepted" on the bill and signing his name under it, but he must deliver it back to the holder before his acceptance is complete. But the object of this Bill is to provide that while that completes an acceptance, the hon. gentleman, if he accepted the bill, could send his notification by letter, which would have the same effect as delivery. It is intended to make that a binding contract of acceptance, although the bill itself may remain in the possession of the acceptor, and not have been delivered.

Mr. McMULLEN. I would like to ask, in the case of a person accepting a bill and signing his name upon it, does this bill make provision that he can complete the acceptance by telephone—by notifying the bank that he accepts it?

Sir JOHN THOMPSON. Yes. I intend to propose instead of the definition of banker in the Bill, that the expression banker means an incorporated bank or a savings bank carrying on business in Canada. Hon. members will fully understand that it is necessary in this country that we should have a different definition of banker from that in the English Act. In the United Kingdom there are very few incorporated banks, the business of banking being principally carried on by firms and private banks. In this country I think it would be more convenient, and would answer all purposes, to limit the definition to incorporated banks and savings banks. If we adopted the English definition, viz., all persons who carry on the business of banking it would be very difficult to determine who are bankers and who are not.

Mr. McMULLEN. I would like to know the object of limiting these transactions to chartered banks and excluding private banks. There are a great many places in the Province of Ontario where there are none but private banks, and I would like to know whether this provision will interfere with the business of those banks.

Sir JOHN THOMPSON. It will not restrict business at all, but certain special provisions are made in the Act with respect to bankers in this country, and we all understand a banker to mean in this country an incorporated bank. It would take me a long time to explain the operation of these definitions, and therefore I am quite willing to let the interpretation clause stand so that as we go through the Bill hon. gentlemen will see the force of these various definitions.

Mr. AMYOT. I would suggest that the following sub-section be added to section 2:—

The expression "signature" means the name in full of the party signing, or his ordinary signature, or his usual cross in the presence of one or more witnesses.

On section 3,

Mr. LANGELIER (Quebec). I think the article in the Quebec Civil Code is much shorter and more satisfactory than this section. The article reads:

"A bill of exchange is a written order by one person to another for the payment of money absolutely and at all events."

That definition has always been found very satisfactory.

Sir JOHN THOMPSON. It means the same thing. The language is very terse and expressive, but it has the disadvantage of being mere code language in contradistinction to the usual language of statutes. It is better to follow the English definition.

Mr. McMULLEN. The section reads that a bill of exchange is an unconditional order in writing. Suppose a bill is half in writing and half printed, will it be covered by that section?

Sir JOHN THOMPSON. This section is precisely in the words of the English statute, which certainly applies to bills partly written and partly printed.

Mr. LAURIER. The word "writing" is simply in contradistinction to verbal agreement.

Mr. GIROUARD. This section defines a bill of exchange to be an order payable to a specified person or to bearer. Supposing there is an order to pay to blank. Will that be a bill of exchange?

Sir JOHN THOMPSON. No; not without some further provision. It may be so in its effect, but it will not be so under this clause.

Sub-section 2,

Mr. WELDON (St. John). In the 9th section a party is allowed to draw a bill of exchange payable at the current rate of exchange. That has been held not to be a bill of exchange, and as this 9th section would appear to be contradictory to the sub-section we are now on, that contradiction should be removed.

Sir JOHN THOMPSON. We will add the words "unless hereinafter otherwise provided."

Mr. LAURIER. Do I understand that under this Act a bill will not be payable to order, but payable to a person named, and will be negotiable?

Sir JOHN THOMPSON. If it is not payable to order or to bearer it is not negotiable except by sub-section 4. We define that a negotiable bill must be made payable to order or to bearer.

Mr. GIROUARD. I presume an I. O. U. without order or bearer, would be negotiable under this clause. That is a change in the law. It is a serious thing to change the mode of doing business in this way.

Sir JOHN THOMPSON. I think that is the law of the Province of Quebec.

Mr. LAURIER. No; in the Province of Quebec, unless it is made to order, it is not negotiable. If it has not one of these two qualities certainly it is not negotiable.

Sir JOHN THOMPSON. The hon. gentleman is right, but the object of the main section is to establish the validity of the instrument, to make plain and simple the law relating to bills of exchange, and to abolish the magic effect of certain words, or the omission of certain words, in the instrument itself.

Mr. LAURIER. I think the magic effect of words should be retained as far as practicable.

Mr. LISTER. I think the clause as it stands now is the proper legislation. According to the law in the Province of Ontario, if we want to make a bill payable at a certain place, we must put the words "not elsewhere."

Mr. McMULLEN. I am satisfied that advantage will be taken of simple-minded people if this provision becomes the law as it is at present drawn. It is desirable to change the law as little as possible.

Sir JOHN THOMPSON. I never saw any simple-minded person who was so well acquainted with the law as to understand that notes were not negotiable unless the words "or order" were upon them, although, of course, there may be such cases. The whole object of the Bill is to make the law broad and plain, and a contract should be just what it purports to be on its face. We should do away with collateral arrangements by word of mouth and compel persons who give notes and wish any restriction to put the restriction on their face. This was the law of Scotland, and it has now been adopted as the law of the United Kingdom.

Mr. LANGELIER (Quebec). I can see no objection to the provision, which will not make much difference as regards the law of the Province of Quebec. Under the Code, if a bill is negotiable it is payable from bearer to bearer, but it can be transferred by a notarial deed of assignment.

Mr. LOVITT. Supposing there is no rate of exchange named in a bill, what would be the rate?

Sir JOHN THOMPSON. The law at present provides that it should be paid at the rate of exchange on the day that the bill is payable.

Mr. LANGELIER (Quebec). Suppose a bill is drawn in France, and no rate of interest is mentioned, would the Canadian rate or the French rate obtain?

Sir JOHN THOMPSON. It would be a foreign draft, and, probably, the rate would be according to the rate of the country in which the bill was drawn.

On section 10.

Mr. WHITE (Renfrew). As I understand it is proposed by this section to make a sight bill payable on demand, that bill would cause a change which would be very inconvenient to a great many people.

Mr. CAMPBELL. I think that the present custom of three days' grace should be maintained. It is now quite customary to allow those three days on bills payable on sight.

Mr. WHITE (Renfrew). That is the law.

Sir JOHN THOMPSON. It is not settled to be the law, but the practice is so. This is to make it clear what the law on the subject is.

Mr. GIROUARD. I do not see how in face of the custom of giving three days' grace we should interfere with it.

Sir JOHN THOMPSON. We will let the clause stand.

Mr. SUTHERLAND. I think the custom of allowing three days' grace is one of great importance between banks and merchants, and I hope the Minister will see his way clear to continue the custom we have now.

Sir JOHN THOMPSON. Of course it would be an advantage to those who have to pay. At present there is no obligation to give the three days' grace; some do and some do not.

Mr. SUTHERLAND. If the present system is interfered with, it will cause a great deal of inconvenience—it would make sharp and short payments.

Mr. WHITE (Renfrew). I think the present system is much the better one, and I would not like to see it changed as regards sight drafts. Suppose a bank has a draft payable on demand, it would be inconvenient for the holder of the draft to wait for its payment. The distinction between sight drafts and demand drafts is that a sight draft is understood to be a draft payable three days after it is accepted, and I think that custom should be continued. I think it ought to be so expressed in the Bill, if the law does not already express it.

Mr. SUTHERLAND. Most business with merchants is done through the bank. An arrangement is made to pay on demand or in cash. The draft is presented to the merchant, and if he were not ready there and then to pay the cash, the note would be protested; but where three days' grace are allowed, he accepts the bill and has three

days in which to provide for payment, and that arrangement meets all practical purposes.

Sir JOHN THOMPSON. Now that attention is called to the matter, I will allow the section to stand so that it can be looked into.

On section 13.

Mr. McMULLEN. I think it is not wise to make a bill a legal instrument when it is dated on Sunday. The present law is that when a note is dated on Sunday it is not collectable.

Sir JOHN THOMPSON. We do not change the law regarding the validity of notes made on Sunday. This is simply the present law, but in order to remove doubts we declare that a note is not valid by reason of being dated on Sunday, which may have been done by mistake.

On section 14.

Mr. LANGELIER (Quebec). I would suggest the propriety of doing away with those days of grace. They have been done away with in France, Italy, Germany, and I think in Spain. It seems to be childish that when a bill is payable on a certain day three days additional should be given. This used to exist in the French law, but they abolished it in the code of commerce.

Sir JOHN THOMPSON. It presents a great anomaly as compared with other contracts, but I think the custom is too old and too well established to be now changed.

Mr. GIROUARD. I think we should add civic holidays to the list. It is inconvenient for banks to have to keep their doors open on those days when other places of business are closed.

Mr. McMULLEN. I agree with the suggestion of the hon. member for Jacques Cartier (Mr. Girouard). It is unfair on a civic holiday to oblige the banks to keep open. Bank clerks should have a respite on that day as well as others. I have known of cases where, on such days, it has been difficult to get men to protest a note. The notaries were away and the notes have had to be protested at a late hour at night, after their return, in order to hold the endorsers.

Sir JOHN THOMPSON. That subject is dealt with in the Act relating to banks. We are only dealing with one class of contracts, and even if we adopted the suggestion just made, that would not make those days bank holidays. It would be inconvenient for the bank when its doors were open, to have to throw over all bills and notes until the following day on the mere proclamation of the mayor of a town.

Mr. MILLS (Bothwell). If the mayor were a debtor he might proclaim a good many holidays.

Mr. DALY. The custom with banks is when a civic holiday is proclaimed for the manager to arrange with his customers several days beforehand to meet their bills, or to arrange with their solicitors to attend at three o'clock in the afternoon, and one clerk is kept on hand to receive payments of these bills.

Mr. GIROUARD. Under our Code, article 2290, if a bill is refused by the drawee in case of need, it must be presented to the referee.

Mr. LANGELIER (Quebec). That is a very good provision.

Sir JOHN THOMPSON. In the United Kingdom that matter was unsettled, but in the United States the presentment is obligatory. It seems that by the German law it is obligatory. It is a question whether we should adopt the provision of the Quebec Code or the English system, and certainly the suggestion as to the inconvenience which may result from the necessity to present the bill to the referee is a serious question.

Mr. LISTER. I think the Statute should remain as it is. The referee may live a long distance away from the place where it would be impossible in point of time to reach him, and therefore both trouble and expense would be saved by adopting this provision.

Mr. GIROUARD. I do not think that is a correct position to take. If the holder accepts that, he knows what he is doing. If the referee lives at too great a distance, he should not accept the bill in that form.

Mr. LANGELIER (Quebec). I think it would be well to take the law as we have it in Quebec. As the hon. member for Jacques Cartier (Mr. Girouard) has stated both parties to the bill should be equally responsible.

Mr. WELDON (St. John). I agree with my hon. friend from Lambton (Mr. Lister) that a great deal of inconvenience might be caused by the adoption of this provision.

Mr. LANGELIER (Quebec). Then why should the referee accept the responsibility?

Mr. LISTER. Probably he could not get anything better.

Mr. LANGELIER (Quebec). Then it is for him to decide when the bill is made.

Mr. GIROUARD. There may be two drawers and the Bill may be payable in two places, and if the holder could not go to the two places it would be a serious inconvenience.

Sir JOHN THOMPSON. I do not think it would be a serious inconvenience, as the reference in case of need will not be much used, because the bill proposes to prevent damages for dishonor as it does.

On section 19.

Mr. WELDON (St. John). I know that this is the English law.

but their banking system is different from ours, and I cannot see any reason or argument why that practice should be introduced in this Dominion.

Sir JOHN THOMPSON. It is the English law, and it is the law of Canada as regards bills of exchange, and it seems much better to make it applicable to promissory notes as well. I do not see why there should be any distinction between promissory notes and bills of exchange, and it seems to me that it would be much better to make the law uniform unless there is some serious objection.

Mr. SUTHERLAND. In Ontario a great many people make their bills payable at their business offices or at their bank. The bill has to be presented there before it is protested, and I would like to know whether this clause interferes with that or not?

Mr. WELDON (St. John). It seems to me that it might place the acceptor in a very awkward position. Suppose a person at Halifax accepts a bill payable at a bank and provides the funds to meet it. He may be away, and if this alteration is made in the law the bill need not be presented to the bank and the party may be sued unless he hunts up the bill himself. Suppose my friend from Bothwell lives in London, Ontario, and he makes a bill payable at a branch of the Bank of Montreal in London, the first thing he knows is that a lawyer in Ottawa may have the case in hand to sue him, although if the bill were presented at the proper bank the funds were there to meet it.

Sir JOHN THOMPSON. I think the reason for the change in England was, that in a great many of those transactions the person in whose favor the bill is drawn requires, for the convenience of protest, notice of presentment, that some place be designated in which he can perform those duties, and in very many cases it is intended only as an address.

Mr. MILLS (Bothwell). It seems to me that if a party makes a bill so payable he ought to be bound by it. The words "not elsewhere" would be regarded as superfluous in any other case than that of a bill or promissory note. If a party designates a particular place as the place of payment surely he means "not elsewhere." You give no meaning to those words under the present interpretation of the law. If a man makes a note payable at the Bank of Commerce in Toronto, and if he does not add the words "not elsewhere" the holder can make it payable where he pleases. That makes the words "payable at the Bank of Commerce in Toronto" perfectly meaningless. It seems to me most absurd that we should persist in inserting words that in any other document in the world would be regarded as superfluous.

Sir JOHN THOMPSON. I am only arguing in favor of the present statute, not only of England, but of Canada as well, on that subject.

Mr. SUTHERLAND. Before this section is passed, I would like distinctly to understand whether, if a merchant makes a bill payable at his office or at a bank in a certain town or city where he does business, it is necessary to present that bill at that place. In the great majority of cases the custom is to make notes or drafts payable at the bank where the maker of the note does business, and it is not necessary for him to be there when the note falls due, because it is usual for the bank to charge the note to his account. That is a great convenience, because when people are away from home, their bank in that way protects them. To make the law such that a note would be placed in the solicitor's hands and costs incurred if the maker were not present when it falls due at the place where it is made payable, would be changing the whole custom of business and would be a great injury to the business of the country. I hope the Minister will take this into consideration, and ask any merchant or bank whether it would be to the interest of the business community to make this change.

Sir JOHN THOMPSON. I understand that the honorable gentleman is perfectly satisfied with the present system. Well, this Bill does not change it. It is true, under the present law, the bill need not be presented at the particular place, and an action may be brought or a protest made without its being presented there. It may be an inconvenience to have the law so; but the honorable member will see how slight the inconvenience is when he urges that that system is carried on everywhere now and is a good one. But the inconvenience, on the other hand, is the inconvenience affecting the liability of the parties, and imposing the necessity of presenting the bill at that place, in order to charge the parties at all, in order to enable them to be sued at all, even though there may be no funds there, or the place may not be accessible or it may be a place where nobody lives. It is necessary to go through the form of presenting them before an action can be brought against the maker of a note.

Mr. SUTHERLAND. I will guarantee that you will not find these words in the printed form of any bank in Canada.

Sir JOHN THOMPSON. These addresses are given mostly for the convenience of the banks, especially in the case of persons living in the suburbs or at a distance from the town. They say, you must give us the address of some one in town where we can present the note for acceptance or payment.

Mr. WELDON (St. John). I think this provision was first put in the Act of 1886, having been taken from the Consolidated Statutes

of Upper Canada, but until that Act was passed the practice in New Brunswick was very different. There the acceptor made the bill payable at a particular place, and that was done for the convenience of all parties, and it must be presented at that place when it falls due. The effect of this provision is that an acceptor must hunt up the parties to the note or else he is liable to be sued, and I agree with the honorable member for Oxford (Mr. Sutherland) that those words are never used. I never saw a bill accepted yet with those words; and I am told by gentlemen cognisant with the system in England that it is more the exception than the rule there. What additional inconvenience is it to present the bill where it can be charged to the acceptor? The majority of bills in this country are payable at a bank, and if the party has good credit or funds at the bank, the bank meets the draft, and thus conveniences him, no matter where he may be. But the effect of the present system is to make the acceptor liable to be sued without being called on to pay the note at all, and it seems to me that it would work unjustly. It works no injustice or inconvenience, because, when presented, he must pay it. So far as this country is concerned, the old doctrine was a great deal better, and it is a doctrine we always held in New Brunswick until the Revised Statutes were passed.

Mr. GIROUARD. I find this is another change in our Code, but I presume it is useless to notice it. It is very desirable to have uniformity in the English law, but we ought to act carefully when we come to make so many changes in the business relations of the community. Article 327 of our Code says:

"If a bill of exchange be made payable at any stated place, either by its original tenor or by a qualified acceptance, presentment must be made at such place."

By this Bill, in order that presentment should be made at a particular place, the words "only and not elsewhere" must be inserted. This clause is to be found in the statute of 1849, which was the first statute of importance concerning bills of exchange and promissory notes, but after a few years it was found to be so inconvenient, and gave rise to such misunderstanding, that the law was repealed. The Code promulgated in 1866 did not contain those words. It is very much to be regretted that so many changes should be made just to have uniformity with the laws of England. We ought to be more careful to have uniformity among the different Provinces, especially as these words "not elsewhere" are not to be found in the laws of any nation on the continent of Europe or in the United States.

Sir JOHN THOMPSON. It was taken from the Consolidated Statutes of Upper Canada.

Mr. GIROUARD. Where it applies to Ontario only.

Sir JOHN THOMPSON. I have no objection to let that clause stand, but I hope it will not be supposed I do so because I do not see the necessity of making that clause. I am open to conviction as to that or anything else in the Bill, but it will be in more uniformity with the whole Bill that if there is any limitation in the contract it should appear on the face of it. The theory is, the acceptor owes a debt; he agrees to pay the debt at a certain place on a certain day, but he should pay the debt anyway, and it is no answer for him to say that he has given the address of a particular place, and that the creditor must be obliged to go there or lose the debt. I have known cases where a note was made payable at a particular place where it was impossible to present it for payment.

Mr. GIROUARD. In our Province the acceptor must have funds at the place named, and there is no presentment unless he proves he has funds there and kept them there afterwards.

Sir JOHN THOMPSON. It is not so elsewhere.

Mr. GIROUARD. It ought to be so everywhere else, instead of taking the law of England.

Mr. MILLS (Bothwell). I know of cases where parties sold lightning-rods to farmers and took notes payable at the farmers' residences. Later on these parties received notices from a solicitor in Toronto that those notes were in his possession and asking payment there with costs, although they understood the notes were payable at their residences.

Sir JOHN THOMPSON. We will let the clause stand, on condition that the honorable gentleman will banish from his mind these notes for lightning-rods. I would not like the law of bills and notes to be settled to suit the hard cases of lightning-rods.

Mr. SUTHERLAND. I quite agree with the honorable the Minister that these parties should not be relieved of the liability to pay because the notes were not presented at a particular place, but I object to the makers of the notes being put to costs through no fault of their own. If my note is payable in the town where I live, a notary in a distant place should not have the power of putting me to the expense of paying the costs of that note because the holder did not choose to present it at the place where it was made payable.

Mr. WHITE (Renfrew). Suppose you take the converse case, where an acceptance is made payable at a particular place and before it falls due the agency of the bank is withdrawn from that place. You will not allow the acceptor to escape liability from the impossibility of the holder presenting it at the agency where it was made payable.

Mr. DALY. In Manitoba the Ontario Bank had an agency at Portage-la-Prairie which they afterwards closed, although a great many notes were made payable there. The court held that presentation there was not necessary.

On section 20.

Sir JOHN THOMPSON. The provision in England is the same as it was at Common Law, that the signature to a blank paper stamped was an authority to the holder to fill it up to the amount which the stamp justified. We have no regulations as to stamps, but I propose to adopt the same principle, and to provide that:

Where a simple signature on a blank paper is delivered by the signer in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount, using the signature for that of the drawer or the acceptor, or an endorser; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit: In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given; reasonable time for this purpose is a question of fact: Provided that if any such instrument, after completion, is negotiated to a holder in due course, it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

Of course, that proceeds on the principle that the man who signs and authorises another to fill up the blank is negligent and must bear the consequences of his negligence. As to the first parties to the contract, it must be shown to be according to the authority given, but the innocent holder may be misled, and the provision is therefore necessary.

On section 21.

Mr. WELDON (St. John). Suppose a bill was stolen from the acceptor?

Sir JOHN THOMPSON. Then it would not have been delivered.

Mr. WELDON (St. John). Then, in the hands of an innocent holder, it would not be valid?

Sir JOHN THOMPSON. I think not.

Committee rose and reported.

Sir HECTOR LANGEVIN moved the adjournment of the House.

Motion agreed to; and House adjourned at 11.50 p. m.

COMMONS DEBATES 1890.

BILLS OF EXCHANGE, CHEQUES AND PROMISSORY NOTES..

20th January, 1890.

Sir JOHN THOMPSON moved for leave to introduce Bill (No. 6) relating to Bills of Exchange, Cheques and Promissory Notes. He said: This is the Bill which received some consideration at the hands of the House last Session, and I introduce it now in accordance with the understanding then arrived at.

28th January, 1890.

Sir JOHN THOMPSON moved second reading of Bill (No. 6) relating to bills of exchange, cheques and promissory notes. He said: The House will remember that this Bill was introduced early last Session, and that considerable progress was made with it. Before its introduction, even then, it had been fully distributed throughout the country, among institutions immediately connected with commerce; not only to the banks, but to chambers of commerce and boards of trade, and to any person who manifested interest in the subject. That distribution resulted in a number of suggestions, more or less valuable, emanating from banking institutions and persons connected with trade and commerce. Those amendments and suggestions were eventually incorporated in the Bill brought before the House when the House was in committee; but, at a subsequent stage, it was considered desirable in view of the great importance of the subject, and the necessity of having a fuller consideration of it by members of the House, to withdraw the Bill for that Session and introduce it early in the present Session. That has been done. In order to furnish further information the Bill was distributed once more to upwards of 100 organisations and persons throughout the country. The result of the second distribution was not to elicit further suggestions of any importance; and I have, therefore, to invite the attention of the House again to the Bill, and to ask that it be now read the second time.

Mr. MITCHELL. Will the Minister of Justice state briefly the

particular changes made in the Bill now under the consideration of the House, from the Bill of last year, especially changes in regard to notarial action?

Sir JOHN THOMPSON. The Bill is now in precisely the state in which it was, with a few verbal exceptions, at the time it was withdrawn last Session. The hon. gentleman may recollect that, after the second reading of the Bill and before progress was made in Committee, the amendments which I intended to make were embodied, in galley form, in a Bill then distributed, not universally throughout the House, but pretty generally. This is the Bill as then printed. I omitted to state that the Bill has been distributed in advance of this Session to members of both Houses.

Motion agreed to, Bill read the second time and House resolved itself into Committee.

(In the Committee.)

On section 2.

Sir JOHN THOMPSON. I may say by way of explanation that the second clause of the Bill contains the definitions embodied in the English statute on the subject of bills of exchange, with the exception, of course, of letter "c." The English Act defines that a banker is a person or body carrying on banking, whether incorporated or not. Inasmuch as our banking institutions in this country are corporations, the definition has been made to correspond with our system in Canada; otherwise the section is the same as the English law.

On section 8, sub-section 4.

Mr. WELDON (St. John). The words "or order" would not be necessary to make it transferable. This is the effect of this section, is it not?

Sir JOHN THOMPSON. That is so.

Mr. MILLS (Bothwell). I do not know whether the rule is uniform in all the Provinces or not, but where there has been an endorsement by a party in whose hands the bill has not been, as where the endorsement is intended as additional security, would that endorsement be accepted? There are some advantages to endorsements of that sort by a person in whose hands the bill never has been as a holder. There have been some American decisions that an endorsement by a party in whose hands a note has never been as holder is only a guarantee of the note, and the party cannot be proceeded against until an attempt has been made to collect the amount from those who would otherwise be liable. Of course, the English rule is

different. I do not know whether it is uniform in all the Provinces or not, or whether it is the intention to make it so.

Sir JOHN THOMPSON. I think there have been conflicting decisions in some Provinces on that subject.

Mr. MILLS (Bothwell). Does the hon. Minister intend by this Bill to establish any rule?

Sir JOHN THOMPSON. Not by this section. That is done hereafter.

Mr. LANGEIER (Quebec). What is the meaning of sub-section 5?

Sir JOHN THOMPSON. It is to make a bill negotiable, unless it is declared that it shall not be negotiable. Some bills, instead of being made payable to A. B. or his order, are made payable simply to the order of A. B., and this is to declare that such a bill is, nevertheless, payable to him or his order, at his option.

Mr. LANGEIER (Quebec). Is it necessary to declare that? Is that not already the law?

Sir JOHN THOMPSON. It is the law now, but it is a point that has had to be settled. We are embodying a good deal of the common law in the Bill.

On section 9.

Mr. LANDERKIN. What rate of interest is meant in sub-section 3?

Sir JOHN THOMPSON. Any rate which the bill may bear; and if it bears no interest, the rate is provided for by the interest law of the country. The object is to meet this difficulty in the common law: that, in order to be valid, a bill or note must be for a certain sum; this section provides that it shall be considered to be for a certain sum, even if it specifies a certain sum of money with interest or by instalment.

Mr. LANDERKIN. What is the rate of interest?

Sir JOHN THOMPSON. The legal rate is at present 6 per cent., but may be varied from time to time by Parliament.

On section 10.

Mr. WHITE (Renfrew). This is a clause which I think elicited some discussion last Session. The present custom is that a bill payable at sight has three days' grace, but it is proposed by this section, as I understand, to make such a bill payable on demand, the same as a demand draft or bill. I would ask the hon. Minister of Justice to consider the advisability of continuing the practice which at present prevails in regard to sight bills.

Sir JOHN THOMPSON. I think the discussion which took place, of which I have some recollection, referred to bills payable at sight, and it was not intended by the Bill as introduced last Session that

days of grace should be allowed on sight drafts; but if the hon. gentleman looks at section 14, he will find that it provides that days of grace will be allowed on a bill unless it is payable on demand.

Mr. WHITE (Renfrew). I think that would not affect this clause, which provides that a bill which is expressed to be payable on demand or at sight is payable on demand. What I wish is that there should be a distinction between the expression "on demand" and "at sight."

Mr. WELDON (St. John). I do not agree with the hon. member for Renfrew. There has always been a difficulty with drafts payable at sight, and it seems to me it would be better to make such drafts the same as demand drafts, without any days of grace.

Mr. WHITE (Renfrew). In the discussion which took place last Session, I think this distinction was made. Bank drafts are usually made payable on demand, when it is intended that they are to be collected on presentation; but, as was stated here during last Session frequently, when a draft is drawn payable at sight, the person on whom it is drawn really owes the money, but is not able to meet it at the moment, he has the three days' grace after his acceptance. That is the present custom, and it seems to me that is a considerable convenience to the mercantile community. If it has not at present the effect of law, it has the effect of custom, and I think it would not be well to make a change in that respect. I hope the Minister of Justice will give his attention to this matter, so that he may provide that, instead of a bill payable on sight being payable on demand, it should be payable only after three days' delay.

Mr. WELDON (St. John). This provision is simply following the English law, by which a bill payable on sight is payable on presentation. As far as circumstances will allow, it would be well to follow the same rule as the mother country.

Mr. BARRON. The custom has been to allow three days' grace on a sight draft, and I think it would be dangerous to interfere with that established custom.

Mr. CHARLTON. The commercial practice in this country has been to allow three days' grace on a sight draft, and I think it would be generally acceptable to the creditor as well as to the debtor if that were continued, because, if those three days are allowed, a far less number of bills would be dishonored than if the sight draft meant payment on presentation.

Mr. PATERSON (Brant). I feel the same in regard to this matter, and I think the Minister should yield. If the bill is to be paid on demand it should be so drawn, but I think it would be very unfortunate to make a sight draft a demand draft.

Mr. WELDON (St. John). The draft in that case should be made one day or three days after sight. I think, in the majority of instances, sight bills are paid on presentation.

Mr. MITCHELL. I do not agree with the last speaker. We have a system which is well understood by the farmers and the business men, and, in fact, by all the people of this country, which is that a sight draft has three days' grace. Why should we change that system and introduce a new one? I am sure the Minister of Justice, who is always so anxious to meet the views of commercial men in this country, will see the advisability of making this change in his Bill.

Sir JOHN THOMPSON. I understood that to be the wish of the House last Session, and I meant the Bill to be so drawn. The hon. member for Renfrew (Mr. White) has called my attention to the fact that a slight amendment will be necessary in section 10, and I will therefore, allow that to stand for the present.

On section 12.

Mr. PATERSON (Brant). Is that the present law?

Sir JOHN THOMPSON. The present law is very obscure, and this is intended to remove the doubt in the same way as it has been done in the English law.

Mr. WELDON (St. John). Do I understand that the parties would have to show the true date?

Sir JOHN THOMPSON. Yes.

Mr. WELDON (St. John). That may lead to a difficulty.

Sir JOHN THOMPSON. It is simply a choice of the lesser difficulty. Perhaps the hon. gentleman has not given full consideration to the latter part of the proviso in this section.

On section 14.

Mr. LANDERKIN. Do you propose to recognise civic holidays in cities and towns?

Sir JOHN THOMPSON. No; only those prescribed by this Parliament and by the Legislature of the Province.

Mr. LANDERKIN. Because on civic holidays banks and such institutions are closed up.

Mr. WHITE (Renfrew). Is the provision respecting the date on which a bill will fall due the same as the law as it now stands? For example: Would a bill dated 31st January, payable one month after date, fall due on 28th February, under the law?

Sir JOHN THOMPSON. Yes, under our present Canadian enactment.

Mr. WHITE. Is it proposed to make any alteration in the law in that respect?

Sir JOHN THOMPSON. No.

On section 15.

Mr. LANGEIER (Quebec). Under the law of the Province of Quebec, and also under the law of the Continent of Europe, it is obligatory, not optional, with the holder of a bill to send to the referee.

Sir JOHN THOMPSON. That is so. In making a uniform enactment on this subject, the question is simply whether we shall adopt the law of the Province of Quebec or that which prevails in all the other Provinces. The hon. gentleman is quite right in stating that, on the Continent of Europe, the reference in case of need makes presentation obligatory. It was an unsettled point in England down to the passing of the English statute, but it has been definitely settled by enactment that it should not be obligatory.

Mr. LANGEIER (Quebec). I simply wished to enquire whether this was the English law. I agree that it is desirable to have an uniform practice with the English law, because our business relations are much more extensive with England and the United States than with the Continent of Europe.

Mr. BARRON. The English law provides for the insertion of the names of one or more persons in the case of need. Does the Minister intend to confine it to one person?

Sir JOHN THOMPSON. The provision is the same as the English statute.

On section 16.

Mr. LANGEIER (Quebec). Under our Code it is provided that on a bill of exchange drawn in the Province of Quebec it can be stated that there shall be no protest, or, if a protest, that the costs shall not be borne by the drawer of the bill. Not only may the drawer do so, but also any endorser. This has been found a very useful provision, because it saves very large costs. Especially was this the case when the system was in force some years ago in Quebec of charging 10 per cent. damages on a bill of exchange drawn on England, and 6 per cent. on any bill of exchange drawn on the United States, if returned under protest for non-payment.

Sir JOHN THOMPSON. The practice to which the hon. gentleman refers has been acted on in other Provinces as well. We have a provision of that kind in the bill, and the only modification is one that has grown up by usage: the adoption of the short form of the words "without protest."

On section 17.

Mr. WELDON (St. John). I desire to enquire as to how this provision will affect letters of credit?

Sir JOHN THOMPSON. I understand that this Bill will not affect that subject. A letter of credit can hardly be considered an acceptance of bills. It is simply a contract, as I understand it, on the part of the writer of the letter, that the bills will be accepted. It seems to me that the remedies will stand in precisely the same position under this Bill as they would at common law. I may call the attention of the Committee to the fact that sub-section "c" has been inserted, as recommended by the representatives of the banking section of the Toronto Board of Trade.

Mr. WELDON (St. John). I understand that a letter agreeing to accept a bill which is not yet drawn has been held good as an acceptance.

Sir JOHN THOMPSON. I understand such letter as an agreement to accept simply, and it is hardly an acceptance of the bill.

Mr. BARRON. I believe the practice is that banks frequently accept those letters of credit in the form of an acceptance.

Sir JOHN THOMPSON. I do not think that would be in any way effected by the bill.

Mr. WELDON (St. John). In the present mercantile law amendment the party who draws the bill would have a right of action under the bill.

Sir JOHN THOMPSON. I will give that matter careful consideration, and, in the meantime, we need not allow the clause to stand.

On section 19.

Mr. WELDON (St. John). That section would not bind the holder to take a qualified acceptance?

Sir JOHN THOMPSON. No. I may call the attention of the Committee to one alteration that was made in this section, in accordance with the view that was generally expressed by the House last Session. The House may remember, when the Bill was under discussion last year, it contained a provision that an acceptance to pay at a particular place is a general acceptance, unless it expresses that the bill is to be paid there only and not elsewhere. That is, in fact, the provision of our present statute as regards the Province of Ontario. I think the feelings of the members from the Province of Ontario was, that it was undesirable to continue that principle, and that it should not be extended to the other Provinces. For that reason the clause was changed; and, for the present, I have omitted that provision.

Mr. LANGELIER (Quebec). The bill must be held to mean what it says. What is the use of saying that a bill is payable at a particular place if it is to be paid at some other place? I do not think it is common sense; and if it is the law of Ontario, I do not think it is desirable to give bad law to the other Provinces.

On section 22.

Mr. WELDON (St. John). I would suggest whether corporations should not be given power to draw or accept bills of exchange and promissory notes. The law of England is indefinite as to whether they have that power or not. I remember that, a short time ago, an action was brought against an educational society, which was erecting a building, and which gave a promissory note in the course of business; and I felt very great doubt as to whether that note was valid or not. It would be a great benefit to these corporations if they had that power, which, it seems to me, could not be easily abused.

Sir JOHN THOMPSON. The subject is provided for, as regards companies incorporated by letters patent, under the Joint Stock Companies' Act, and it seems to me that the effect of this provision will be to enable a corporation to make a promissory note if the capacity to do so has been conferred upon it by its charter. At present the practice pursued by the Provincial Legislatures in granting charters, is to make provision that the companies shall have to make promissory notes and bills of exchange. We have heretofore objected to Provincial Legislatures undertaking to confer that power, as being a power within our own jurisdiction. This provision will have the effect of removing that doubt from provincial charters which purport to confer that power, so that if the charter of any corporation, no matter by what Legislature granted, confers upon it that power, it will have the right to exercise it under this Act. Whether we should go further and declare that any company should have the power, whether its charter gives it the power or not, seems to me rather doubtful.

Mr. MILLS (Bothwell). The language of the section, as it stands, is too indefinite to accomplish what the hon. Minister states to be his object. It refers simply to a general Act relating to incorporated companies, but would not refer to the powers given by a special Act of incorporation.

Sir JOHN THOMPSON. I propose to meet the difficulty by inserting the word "such" before the word "corporation."

On section 24.

Mr. LANGELIER (Quebec). What would be the effect of this clause,

supposing the name of the drawer of a promissory note was forged, and the note after endorsement passed into the hands of other parties? Would the fact of the forgery of the drawer's name make the note a complete nullity, or would not the endorser be liable?

Sir JOHN THOMPSON. This does not alter the present law. It simply carries out the provision of the common law in the case of the signature being forged.

On section 26.

Mr. MITCHELL. It appears to me there is some inconsistency in this clause. The first part provides that, where a person adds words to his signature indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon. But then it says that the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability. It seems to me there is some inconsistency in that.

Mr. WELDON (St. John). That is the present law.

Mr. MITCHELL. It may be the present law, but I understand this measure is intended to improve the present law and to remove its incongruities. I would suggest to the Minister that he should reserve that section, with a view to consider and amend this provision.

Sir JOHN THOMPSON. As the member for St. John (Mr. Weldon) has stated, this is simply the present law; but perhaps the hon. member (Mr. Mitchell) has misunderstood the clause, the purport of which is to provide that, where John Smith signs a note in the name of, say, the Ottawa Manufacturing Co., he is not personally liable, but if he signs the note "John Smith" and adds, "Agent of the Ottawa Manufacturing Company," as in that case he is simply adding his own description, he is personally liable.

Mr. MITCHELL. Then, I understand that if in the one case he signs the name of the principal, with himself as agent, he is not personally responsible; and if, in the other case, he signs his own name as the agent, he is responsible. I think that is rather inconsistent, and it would be well for the Minister to reserve that clause.

Mr. Weldon (St. John). The English law provides just the same thing. It would be well to have this clearly defined in order to prevent any doubt arising, and I think the adoption of the English rule will remove any doubt.

Mr. MITCHELL. I have often objected to one thing in this House, and that is, the endeavor on all occasions to follow English practice and English precedent, and to adopt the wording of English laws.

My hon. friend states that this is the practice in England, and that where a man signs as agent there is a very great deal of doubt existing as to his liability. I say this section continues and retains that doubt. In my opinion it ought to be immaterial whether a man signs his name in a representative capacity, as agent for a principal, or whether he signs the principal's name and signs his own as agent of that principal. My hon. friend says people in the country know this distinction, because it is the law. How many people who are doing business with manufacturers' agents, and the agents of various merchants and others, know about that clause of the law? They may think, when they sign as agents of a manufacturing company, they are simply creating a liability on the part of the company. My hon. friend and the Minister both admit, and the Act itself states, that if the agent signs as the agent of a manufacturing company, he is personally liable, in addition to the liability of the company. Now, I think that ought to be removed, and wherever a man puts upon the back of a bill any explanation of his attitude with a view of protecting himself from liability, that should have the effect of relieving him from personal liability, and only bind him in his representative capacity.

MR. BARRON. I would suggest to the Minister that he had better add the words "for the purpose of identity" after the word "character;" because I think it is wise to retain, as far as possible, the wording of the English Act, as there are decisions under the English Act which would help us.

SIR JOHN THOMPSON. I am afraid that would only continue the obscurity. Let the hon. gentleman reflect that some of the illustrations given in the Bill are these: Where executors sign, stating that they sign as executors, they are nevertheless bound personally. Under this Act it is intended that they should be bound. I think, with respect to the remark of the hon. member for Northumberland (Mr. Mitchell), we have, first of all, to keep in view the great necessity for providing, in the case of contracts of this kind, plainness as to who is to be bound by these contracts. In the second place, this principle must be borne in mind: that if there is any ambiguity in the instrument itself the person who has the opportunity of removing that ambiguity is to blame for it, and should bear the burden. We provide a distinct rule, and in doing that we accomplish a great deal by removing the obscurity that now exists upon that subject. We provide that if a man desires not to be bound himself, he must sign the name of his principal to the instrument and declare that he is merely an agent; but that if he signs his own name first he shall be personally bound. When we have laid down a clear rule upon

the subject, the fault will be clearly that of the person who wants to limit his liability, if he does not follow that rule. If we had the subject to reconsider *de novo*, there might be some weight in the contention that where it appears in any way on the face of the instrument that a person acts in a representative capacity he should not be personally bound. The difficulty of changing the law upon that subject is not merely that we are not following an English precedent—that would be, as the hon. member for Northumberland (Mr. Mitchell) says, comparatively of little consequence—but we would be changing the course of the law which we have followed ever since the settlement of the country, or, at any rate, ever since the settlement of this question at common law, and we should be establishing a new rule, and, I am afraid, introducing a great deal of inconvenience, because it would conflict with the English law and with the common law which has prevailed in this country for so long a time.

Mr. MITCHELL. I admit it is difficult to follow the hon. gentleman, with his great ability and his great powers of speaking, and putting forward his views in such a gentlemanly and clear manner. The hon. gentleman says that it would be altering the principles of the law well understood for many years past. Now, I think it has been a great and fertile source of litigation, and a great source of revenue for the lawyers of the country, to define what the liability of an agent is, when he is personally liable and when he is not. The hon. gentleman says it would be wrong to depart from the principles of the common law which have been so well understood. If I understand the object of this Bill, it is to define and make clear those parts of the law where doubts have existed in reference to the usages and decisions that have been obtained in past years under the common law. Now, here is a very strong illustration which could be given: that if this legislation, now under consideration, is to be worth anything, it is desirable that whenever a point arises in the consideration of this measure, affecting, as it does, the commercial law of the country and extensive business transactions, the single object is to describe when and where an agent shall be liable personally and when he shall not. What would be the natural conclusion if we were to frame laws *de novo* upon that subject? It would be this: that in any commercial document in which a principal was represented by an agent, whenever the agent, in the execution of that document, placed in words upon the face of it that he acted as an agent only, he should not be personally liable. That is clear. Why, then, should the ambiguity be continued in this section of the Bill? My hon. friend says that he has defined when

an agent is liable and when he is not, by the words of the Bill. How many people throughout this country will ever read that section of the law? How many of the hundreds of thousands of people who are carrying on business and signing documents, acting for principals, will even know the fine distinction contained in that section of the Bill? If that is the case, why should we allow these men unnecessarily to get into trouble and create a personal liability for themselves which was never intended by the persons with whom they are acting, nor by the principals for whom they are acting? I think the main object of this measure is to make clear the law where it is doubtful now, and this is one doubt that now exists, and I hope the hon. gentleman will reserve for consideration this section, with the view of amending it.

Mr. LANGELIER (Quebec). I think the best course to adopt is to leave the law of agency completely out of this Bill. This section conflicts with the question of agency. The liability of an agent does not relate to notes and bills of exchange. I also remark that this section will introduce a change in the law relating to agency, which law is very satisfactory as it now stands. Under the law of the Province of Quebec an agent is responsible if he is a commission merchant; he is personally responsible, even when he acts in his capacity of agent, if his principal is in any foreign country. That has been found very satisfactory; but if this section passes, that provision of the law would be removed so far as bills of exchange are concerned.

Sir JOHN THOMPSON. That is the law all over Canada.

Mr. LANGELIER (Quebec). That section also would apply to all bills of exchange drawn from foreign countries. It is most desirable that the law as to agency should not be changed.

Mr. CHARLTON. The Minister of Justice is no doubt well aware that a knowledge of the law is the exception, not the rule, among business men. I take it that if a man signs his name as agent, he does so under the belief that it exempts him from personal liability. To insert a clause in this Bill to hold him personally liable, when he thought he was not liable, would hardly be just. The fact that a man signs as agent is *prima facie* evidence that he disclaims all personal liability. It is for the party who drew the bill to obtain information in relation to the party in question. But to provide by this clause that unless the party complies with certain phraseology and a certain form, although, in point of fact, he does explain what his position is, or supposes he does so, is to work an injustice. The fact that he has signed as agent indicates that he is not the principal, that he has not signed for himself, but as the agent of another

party, and that circumstance should exempt him from personal liability. The clause now proposed would work disadvantageously and unjustly in a great many cases.

Mr. WELDON (St. John). I do not think the difficulty is so much as regards principal and agent as parties representing estates, such as executors or persons holding official positions. They sign in their official capacity, and understand, when they sign as executors or agents, that they are not holding themselves personally responsible. Clauses might be inserted to cover this point. In some cases a party signs a note or bill of exchange as executor, not supposing that he makes himself liable; but, after a lapse of time, in consequence of the failure of other parties, he is held to be liable. Of course there are difficulties surrounding the question, but the English rule might be followed, that a party must expressly exempt himself from liability.

Sir JOHN THOMPSON. The hon. member for North Norfolk (Mr. Charlton) disapproves of the provision on the ground that very few persons are acquainted with the law. He must remember that if this clause were cut out the common law would remain; and if few persons are acquainted with the statutes, still fewer have studied the common law. In regard to the law of the Province of Quebec, I understand the principle of the law on this subject is the same. I have no objection to allow the clause to stand, but I do so with the understanding that I have in no way modified my views in consequence of allowing further consideration.

Mr. MITCHELL. The point I make in regard to the hon. Minister's last remark is this: I do not care whether the common law or the statute law contains this provision or not, but I hold it is due to the country that, where a man represents that he is the representative or agent of another, he should not be personally liable. That is the point I desire to make. It is the duty of the Government, in codifying the laws, to frame a section to provide that when a man signs a document, purely in his representative capacity, believing that he is not making himself liable, at the same time the receiver not expecting him to be liable, he should not be liable. I think the hon. gentleman has such great ingenuity and ability as to be able to frame a clause to accomplish this object. As the hon. gentleman has allowed the section to stand, we will have an opportunity to discuss it again.

Mr. KIRKPATRICK. On the other hand, we should take care that innocent persons shall not be given pieces of paper which are worthless. Farmers receive many promissory notes; and if the suggestion of the hon. gentleman opposite be adopted, a man may sign himself

as the agent of some person, or as acting in some representative capacity, and give notes which will prove to be worthless, and thus escape liability. There must be a distinction drawn. I do not see how this can be done except in the words of the section. If the person signs in a certain way he should be personally liable; if he chooses to put after his name the statement that he is agent of some company, that fact should not allow him to escape liability; it might be that he was a lightning-rod pedlar or something of that kind. If a man signs ostensibly for a company, then let the company be responsible, and no one else; but if he signs his own name he should be held to be liable.

Sir JOHN THOMPSON. We will allow the section to stand, in the hope that the hon. gentleman opposite will become convinced. When the hon. member for Northumberland (Mr. Mitchell) is almost convinced, he always accuses me of special pleading.

Mr. MITCHELL. I regret that the tone of the hon. gentleman's voice was so low that I did not catch the force of his, no doubt, very forcible remark. When the question comes up again, I hope to meet the hon. gentleman with a view to endeavor to come to some common understanding whereby innocent persons will be protected.

On section 30.

Mr. MITCHELL. I think, Mr. Chairman, there might be some doubt in regard to this section. It uses the words "for value or not." I would quite agree that the holder "for value" of such a bill should make the maker personally liable, but I doubt the propriety of allowing the holder "without value," or where a bill was fraudulently obtained, to have recourse against the maker. Suppose a man forces a bill out of another and gives it to another party, that other party can prosecute the maker.

Mr. WELDON (St. John). He cannot, because he does not get it from the holder in due course.

Mr. MITCHELL. The wording seems to indicate that here, but it may be that it is intended that only lawyers can understand this bill.

Mr. KIRKPATRICK. I would like to ask the Minister of Justice if he has incorporated in this Bill a provision that where notes are given for the purchase of patent rights, they must have stamped upon them "given for patent rights?"

Sir JOHN THOMPSON. That provision is not in the Bill, but it is in the present law.

Mr. KIRKPATRICK. I think we should have a clause of this kind in the Bill. It is an important provision, as a great many notes given for patent rights are largely given fraudulently.

Mr. BURDETT. The provision is an Act of Parliament by itself, and is not repealed by this law. I intend to introduce a bill directed against this kind of rascality, and also against another species of rascality adopted in our part of the country, in relation to notes given for seed.

Mr. MITCHELL. I must say that I agree with the hon. member for Frontenac (Mr. Kirkpatrick). If we are mentioning exceptions in the case of notes, all those exceptions ought to be incorporated in the body of the Bill.

Mr. MULOCK. I think it would be wise to follow the suggestion of the hon. member for Frontenac (Mr. Kirkpatrick).

Mr. KIRKPATRICK. If we are consolidating the law in this respect, the matter I have referred to should be incorporated in this Bill.

Mr. MILLS (Bothwell). I think that law is better separate than it would be embodied in this Bill, because that law aims at what may be regarded as a criminal offence. It is to protect parties against certain fraudulent proceedings.

Mr. LAURIER. Would the hon. Minister explain what he means by the third sub-section of section 30, referring to usurious consideration?

Sir JOHN THOMPSON. That is now the Canadian statute law.

On section 31.

Mr. WELDON (St John). It seems to me that when a person endorses a bill in a representative capacity, the mere statement of that fact should be *prima facie* evidence that he does so without making himself personally liable. This section puts upon him the necessity of using words to relieve himself of personal liability.

Sir JOHN THOMPSON. A man may, for instance, be bound by his duty as an executor to endorse a bill, and this provision permits him to add that he does so in his representative capacity only.

Mr. MITCHELL. This sub-section is inconsistent with section 26, which states that the mere addition to a signature of words describing the signer as an agent or as filling a representative character does not exempt him from personal liability.

Sir JOHN THOMPSON. On the contrary, the sections exactly fit each other. This section is to provide that, notwithstanding the previous section and that principle of law, a man may validly endorse a bill as executor, and at the same time add words stating that it is not binding on him personally.

Mr. MILLS (Bothwell). I fancy that the difficulty would be that if a note or bill went into the hands of an innocent holder, how

would he know in what capacity it had been endorsed unless it were so stated on the bill?

Sir JOHN THOMPSON. This provision is to mitigate the force of the principle laid down in section 26, in cases where persons are under obligation to endorse bills or notes in their representative capacity.

Mr. WHITE (Renfrew). I think there is good deal of force in what the hon. member for Northumberland (Mr. Mitchell) says in regard to the comparative ignorance of business men of acts of this kind. Take for instance, the case of the secretary of a company. A note is payable, say, to the National Manufacturing Co. The secretary is bound to endorse that note, and he does so as secretary of the National Manufacturing Co. It seems to me that that ought to be sufficient notice to the subsequent holders of the bill that he has endorsed it in his capacity of secretary of the company, and that it ought not to be necessary for him to add any additional words declaring that he is not personally liable.

Mr. KIRKPATRICK. Might I direct the attention of the Minister of Justice again to section 12 of chapter 123 of the Revised Statutes, which provides that every bill of exchange or promissory note given in consideration of the purchase of or interest in a patent right shall have written across the face thereof, the words "given for a patent right." That is the law now, but you are proposing to repeal that law, and I do not think it would be wise to do so. I hope the Minister will introduce that clause into this Bill, because, by the schedule, you are proposing to repeal it.

Sir JOHN THOMPSON. I have already made a note of that.

Mr. MITCHELL. I do not think any gentleman in this House will suppose that my hon. friend on my right (Mr. Charlton) is not a very intelligent member of Parliament or that he does not know what the laws of this country are. I do not think I am a fool myself, but neither my hon. friend nor myself knew until now of the existence of that provision referred to by the hon. member for Frontenac (Mr. Kirkpatrick). Therefore it shows the necessity of that provision going into this Bill.

On section 33.

Mr. LANDERKIN. I think this section brings up again that question of patent rights. I think that, from the rascality which has been practiced by the persons who take these notes around the country, this House ought to take some action in the matter. If it were made the law of the land that these transactions should be cash transactions, that would be all right, and if it were understood that

no note for a patent right should be negotiable, it would prevent these rascals from going through the country and victimising the people they meet. Certainly some drastic measure is necessary, and in that case some of the men who are now imposed upon by the artful, wily schemers who go through the country, would be no longer imposed upon. This thing ought to be stopped, and I believe this is the way to do it.

Sir JOHN THOMPSON. If these were to be made payable in cash, that would hardly be within the provisions of a Bill in regard to bills of exchange.

On section 34.

Mr. WHITE (Renfrew). Is that the law at present?

Sir JOHN THOMPSON. Yes.

On section 42.

Mr. KIRKPATRICK. Is it stated what is the customary time for acceptance?

Sir JOHN THOMPSON. No.

Mr. KIRKPATRICK. Is it to differ in the various Provinces? Ought we not to state the number of hours that a bill may be left for acceptance?

Mr. WELDON (St. John). It is usually twenty-five.

Mr. KIRKPATRICK. It might be so stated, as the rule may not be the same in all the Provinces.

Sir JOHN THOMPSON. Does the hon. gentleman propose that a rule shall be established on the subject?

Mr. KIRKPATRICK. I think so.

Sir JOHN THOMPSON. Then let this section stand.

Committee rose and reported progress.

7th February, 1890.

Sir JOHN THOMPSON moved that the House again resolve itself into Committee on Bill (No. 6) relating to bills of exchange, cheques and promissory notes.

(In the Committee.)

On section 49.

Mr. BURDETT. I want to know if the Minister proposes to saddle a man who endorses a note, with \$2.50 for the pleasure of doing so,

in the shape of a protest? In Ontario, you get 50 cents for the protest, 25 cents for each notice, and the postage.

Mr. WELDON (St. John). We have not got to that yet.

Mr. BURDETT. We are pretty near it—close enough to talk about it, any way. I think it is hard enough to pay a note you have endorsed without paying for a protest. Possibly, the Minister of Justice has had no experience of that kind, but we who have had experience of that kind do not want to pay any more than we agree to pay; and we who are not bank solicitors do not intend to pay \$2.50 for the privilege of endorsing a note for a friend. I intend to divide the House upon the question of charging more than the protest rates for protesting a note in Ontario. I do not think that any body can fairly charge more. No man honestly earns more than is now allowed in the Province of Ontario, for protesting a note. A bank solicitorship is simply a sinecure at present, given to some friend of the Bank, who makes so much out of it in protesting notes. It is not honest or fair, when a man sees fit to put his name upon a friend's paper, that he should have to pay some bank solicitor for the privilege of having done so. It is hard enough in many cases, and disastrous enough to have to pay the liability, without paying an unnecessary and exorbitant charge for it. The hon. Minister of Justice comes from a Province that may have a different rule, and different charges; I am stating the fees as they are charged in Ontario. They are large enough, in all conscience—too large, in my judgment; but I am not in favor of changing laws that are known and well understood. But upon the question of protest, and upon the three days grace, I have a very strong opinion. I think a man who signs a note, knowing what he signs, or a man who endorses a note, knowing what he endorses, ought to pay it at the time he agrees to pay it, and he ought to pay the amount he agrees to pay, provided he is able to do so; if he is not able to do so, his creditor ought to forgive him. But the charge of \$2.50 in this Bill for a protest, is simply indefensible, and I trust the hon. Minister of Justice will make the charges as they are now in Ontario, or less, if possible.

Mr. KIRKPATRICK. That is in the schedule—when we come to it.

Mr. BURDETT. It is near enough now. I do not intend to let a dog bite me before I kill him.

Mr. WELDON (St. John). We are not discussing that question just now.

Mr. BURDETT. You are a bank solicitor.

Mr. WELDON (St. John). Yes; and a responsible position it is.

Mr. BURDETT. The responsibility consists in drawing the pay.

Mr. WELDON (St. John). I must meet my hon. friend on that question when the proper time comes.

Mr. BURDETT. I do not expect to be able to convince solicitors of banks. It is hard to convince men who have their pay in their pocket, but the poor fellow who has his name at the back of a note is easily convinced that he should not pay more than that sum. My experience has been that of having my name on notes and not at the foot of protests. I have strong sympathy with the man who has to pay, and not with the man who is paid for doing little work.

Mr. LISTER. There is nothing about protests in that section.

Mr. BURDETT. You are a bank solicitor, I guarantee.

Sir JOHN THOMPSON. I think the suggestion of the hon. member for St. John (Mr. Weldon), is a correct one. The subject referred to by the hon. gentleman (Mr. Burdett) is one of great importance. The hon. gentleman is mistaken in supposing that I have framed the Bill with a view to suit matters in my own Province.

Mr. BURDETT. I did not say you had.

Sir JOHN THOMPSON. The fees in all the Provinces, except Quebec, are the same as those in Ontario, and the scale of fees proposed in the Bill is that of the Province of Ontario. It is submitted simply as a suggestion, with a view to making the law uniform in that particular. If the Committee think the fees are too high in Quebec, one of two courses can be adopted: To decline to make them uniform, or to make them uniform by reducing them.

Mr. BURDETT. I am not accusing the Minister of any desire to increase them, but I am simply calling attention to the fact. I presume the Minister is aware that, under the law of Ontario, where notice of dishonor or protest has not been given, and the party endorsing the paper promises afterwards to pay the bill, that is held to be a question of fact, and if found against the promisor he is obliged to pay the bill, although no notice of protest has been given. That, in my judgment, is an infringement of the Statute of Frauds. Promises made after a bill has been dishonored or when overdue, should not be admitted, except made in writing. I do not know whether the Minister of Justice is aware that this has been held to be the law in Ontario.

Sir JOHN THOMPSON. Yes, and in other Provinces also.

Mr. BURDETT. In my judgment, this system has led to a great deal of hard swearing, and a clause should be inserted in this Bill providing that such promises must be made in writing.

Mr. LISTER. Under this Bill it is not necessary to give a written notice, but if the notice is imperfect, it can be supplemented by a verbal notice. This leads to much litigation. The whole system of

presentation and protest will have, ultimately, to be abolished. When a man endorses a note, he enters into a contract to pay the amount, if the maker of the note does not pay. The service of the notice of dishonor is a mere form. I repeat, that if a man accepts a draft or endorses a note, he undertakes to pay it, and he ought to be held liable until it is paid.

Mr. WELDON (St. John). An endorser simply undertakes to pay if the maker of the note does not pay. It is very important that an endorser should have notice, because he may thereby be enabled to take measures to protect himself from loss. I agree that a party should not be placed in a position so that he can avoid payment on some technical objection. I am not, however, prepared to abolish the notice, for I can see that an endorser might be placed in an exceedingly difficult position, and might not know whether the note had been paid or not. If at the time he had notice, he might be able to secure himself from the prior parties. But the party deciding to wait for twelve months and then come upon him, it seems to me, would, under the circumstances, be a very great hardship.

Mr. BURDETT. The admission made by the two hon. gentlemen who have just sat down calls to my mind the time when the Ontario Legislature, in their wisdom, increased the members' indemnity from \$600 to \$800. A distinguished member of the House at that time said: "This is a subject upon which we can all agree." And, as I find two distinguished solicitors of banks admitting that protests may, and ought to be abolished, I respectfully submit to this House, "that this is a subject upon which we all can agree." I, therefore, suggest that the Minister of Justice wipe out of the schedule that little list of fees to those who act as solicitors for banks, so that the poor fellows who are unwise enough, or good enough, to endorse notes will only have to pay the notes, and not pay for the pleasure of some gentleman walking up to the bank and telling him he has got to pay. As we all agree on the question of abolishing protests, I trust there may be no trouble about it.

Sir JOHN THOMPSON. Perhaps we may attain the hon. gentleman's object just as well by leaving in the provision for the protest and abolishing the fees.

Mr. BURDETT. That will do just as well.

Mr. LISTER. The difficulty with my hon. friend from Hastings (Mr. Burdett), is that he has not been able to get appointed solicitor for a bank.

Mr. BURDETT. My reputation is too good for any bank to employ me to do any such work.

Mr. LISTER. So far as this notice of protest is concerned, it merely

gives the man who entered into the contract, and who intended at the time he entered into the contract to pay, if the principal debtor did not pay, an opportunity of escaping from the liability which he believed would be incurred. Why should a man who becomes security on a promissory note be in a different position from a man who becomes surety on any other instrument? Why should a man who becomes security for a party's bond, not demand notice that the bond has not been performed, in order to hold him responsible to the same extent as the endorser of a promissory note? This whole law is based on an old fiction which has come down to us from our forefathers, and which is no reason for the additional expense. The whole question of protesting promissory notes is one which is kept upon the Statute-book, not in the interest of the man who has become security, but in the interest of the bank solicitors. The hon. members for Quebec, who are members of the notarial profession, have, I see, very liberal fees indeed payable to them. I do not care whether the Minister of Justice retains that tariff or not, but, so far as I am individually concerned, I think the amount payable to us in the Province of Ontario for that service, if it is to be continued, is abundantly sufficient.

Mr. BURDETT. I have one convert.

Mr. LISTER. I, for one, will support what my hon. friend from Hastings (Mr. Burdett) suggests—that the fees should not be increased.

Mr. WELDON (St. John). He wants to abolish them altogether.

Mr. MILLS (Bothwell). I think there is a great deal in what has been said by the hon. member for West Lambton (Mr. Lister). The difficulty I see is, how is the endorser to know whether the note is paid or not, or into whose hands it has gone. If the note was not a negotiable paper he would have no difficulty, and it would be his duty, by the exercise of due diligence, to ascertain whether this liability existed or not; but a note given by A. to B. in the city of Ottawa to-day, may, next week, be in the hands of some one in Rochester, Buffalo, or New York, if the party is well known, and the endorser may have no means of knowing in whose hands the note is, nor may he be able to communicate with the party for the purpose of ascertaining whether it is paid or not. That is the distinction between a note and a bond, for although it may be assignable it can always be traced, and the property represented may be changed by simply passing from hand to hand. My hon. friend from Hastings says that the endorser ought only be liable for the amount mentioned in the note. That might be a very good rule for the endorser, but it would be a very bad rule for the solicitor, whose

business it was to make protest, and it would be quite as good an objection against the payment of 50 cents as it would be against the payment of \$5. It is not a question of more or less, as my hon. friend from Hastings (Mr. Burdett) says, but a question of whether there should be liability or no liability at all. I suppose my hon. friend allows nothing for insurance for every solicitor who takes a note, and who, by negligence, fails to make a proper protest, incurs the liability of the face value of the note, and is bound to pay it. Therefore, although the solicitor takes considerable risk, and is dependent upon his clerks or upon his partner to do the work properly, if they fail, he will have the liability to meet without any compensation whatever.

MR. BURDETT. My hon. friend misapprehends me. My remarks were all predicated upon the assumption that he who signed a contract, simple, special or of record, ought, if he is able, to perform the contract according to the terms thereof. If he is not able he ought to be forgiven. I do not see any reason why a man who endorses a promissory note for a friend ought to have to pay \$1.50 more or less to find out that he has endorsed that paper, when he who goes security for a friend in a contract, simple or special, or of any character needs no such notice to make him liable. If I enter into an agreement with a friend or become security for the performance of any contract, no matter whether it is in the United States or Canada, I may be sued upon that agreement or that contract upon its non-performance. I do not see why any difficulty should exist in the case of promissory notes. My own experience is that if I have a note against an individual, endorsed by another, and it is not paid at maturity, it will not be many days before the endorser will hear of it. I do not think it would be asking too much of the holder of a note to notify the endorser without fee or reward. We are simply preserving a relic of past times which is more expensive than useful. It is of no material benefit either to the maker, the endorser, or the holder of the note, that he should be notified in writing, or otherwise, that he has become bound that his principal should perform the contract. As to the liability of the lawyer, if the law is changed so that he incurs no responsibility for not protesting, then, where there is no liability and no responsibility, and no duty or work performed, surely there ought not to be any pay. The duty performed in this case is simply perfunctory, formal and unnecessary, and costs a man a dollar or more in many cases, when he is scarcely able to pay the principal. In all fairness, I think this whole system of protesting paper ought to be done away with. I cannot see any difference in a man's liability, either moral or legal, whether he puts

his name on the bottom or on the back of the note. Knowing that he has agreed to pay it at maturity, he ought to pay it if he is able, whether it is protested or not. This other system of three days grace also leads to a great deal of misapprehension. In these days of silk gowns, scarcely any of these gentlemen can agree on a proper mode of framing a Bill on the simplest of all contracts—promissory notes. I, therefore, hope the hon. Minister of Justice will see fit to do away with the schedule of fees at the end of the Bill, at least, if not with the whole system of protesting promissory notes. If he does, I think his action will meet with the approval of the House and the country. It will certainly meet with the gratitude and approval of all unfortunate sinners, who, like myself, have endorsed notes for friends.

Mr. SPROULE. I agree with a great deal that has been said by the hon. member for Hastings, but I think he goes a little too far when he proposes to do away with the notes entirely. When an endorser puts his name on a note, it is done for a limited period, in the belief that the person who makes the note will be in a position to meet it when it falls due; if it were to be for an indefinite period, he would in many instances refuse to put his name on it. The notice informs the endorser that the contract is not fulfilled, and it gives him the opportunity to save himself in the event of the other party endeavoring to make away with the property or being unable, from some unfortunate circumstance, to discharge his obligation. I agree with the hon. gentleman, however, that if the fees cannot be done away with entirely, they should be reduced. I certainly endorse every word he says when he suggests that the party in whose interest the note is drawn should be compelled to notify the endorser at his own expense; but if the sense of the House is different, I think the fees should be made the smallest that would be considered fair compensation for the work done.

Mr. WELDON (St. John). It seems to me that we should be taking a very serious risk if we made any such radical change as is proposed. If endorsers were held liable without notice a man might find himself sued on a note five years after endorsing it without the slightest intimation, and without any recourse against the maker. An ordinary bond cannot be transferred, but a promissory note may pass from hand to hand, and therefore it is not unreasonable to require that the holder shall notify the sureties. That, of course, entails a little expense; and my hon. friend from Hastings (Mr. Burdett) seems to think that the fees are a great benefit to the bank solicitors. I can tell my hon. friend that it is a pretty serious matter to take the responsibility of protesting notes, because if the

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solicitor fails to give the proper notice of dishonor, he may become liable for the whole face of the note. It is a question whether the present practice is not, after all, the best in the interest of the commercial world. If the endorser got no notice, and thereby saved this trifling expense, he might find himself served with a writ which would, perhaps, put him in for very much larger costs. The notice is really for the benefit of the endorser, to enable him to protect himself, and to see that the party who is primarily liable shall meet the note.

Mr. BURDETT. The hon. gentleman who has just spoken cannot comprehend the law of Ontario when he speaks of contracts not being assignable. Of course, we know that promissory notes are assignable by simple delivery from hand to hand; but by an Act of the Ontario Legislature all contracts have been made assignable by any form of writing, without notice to anybody, and the assignee may sue in his own name without any notice to any party to the contract. In order to protect himself against other assignments, he may have to give notice; but that is aside of the question. I do not see any just reason why a man who has agreed to pay a sum of money at a fixed date should be obliged to pay \$2, or \$2.50, for being told by a solicitor, however respectable, that he must pay.

On sub-section *j* of section 49.

Sir JOHN THOMPSON. I propose to strike out this, because there is no Insolvency Act to which it would be applicable. It was merely inserted with a view that it might fit in with the provisions of an Insolvency Act, should such be adopted.

Mr. LISTER. There are Acts in the several Provinces for the winding-up of an insolvent estate.

Sir JOHN THOMPSON. This sub-section was not intended to fit those cases. To make a sub-section to suit them, we should have to see what the law of each Province is, and would have to recast it—the section.

On sub-section *l* of section 49.

Mr. KIRKPATRICK moved that the words "on or before the next following juridical or business day" be inserted.

Motion agreed to.

On sub-section 4.

Mr. MONCRIEFF moved that the following words be added to the fourth line, after the words "at the place at which such bill is dated," "or at his customary address or place of residence."

Motion agreed to.

On clause 50.

Mr. BURDETT. I do not like that word "implied." I think a man who endorses paper, or makes it, should know the ground on which he stands, and that term "implied" is very comprehensive, and ought to be stricken out of the Bill. I think the notice ought to be express and ought to be in writing. In my judgment, if this Bill passes in this shape, the result will be that a notice of protest is not necessary to bind the endorser but is simply given for the purpose of making costs. Where you say a man is excused if not guilty of negligence, or default, or misconduct, who is to say what is negligence, default, or misconduct? What does "implied" mean? I submit that the term ought to be defined, and a man ought to know what he has to rely upon. That word "implied" ought to be stricken out, and the waiver ought to be in writing. I would go so far as to say that it should be signed by the party in charge, or by his agent. That when a man is relieved from the payment of a note that he has endorsed, by reason of its not being protested, he ought not to be bound to pay that note unless he in writing agrees to pay it. Where he has to pay a fee for receiving that notice, he ought to have some corresponding advantage. The whole result of this clause is, in my opinion, that any man may, for some of the reasons given, be excused from protesting a note, and yet he may get the fees for protest.

Sir JOHN THOMPSON. I could not undertake to propose to the Committee an alteration of the law of contracts so sweeping as that. We have the law of waiver as regards the right that a person possesses. We have the doctrine of implication running all through the law of contracts, both as to waiver and everything else. The hon. gentleman knows that contracts may be made by implication, rights may arise by implication, and surely these ought to be capable of being waived by implication. There are some very plain cases in which one ought to be held to have waived his rights to a notice of dishonor. For instance, if the person bound, whether endorser or drawer, before the time comes for giving the notice of dishonor, says to the holder that the note will not be paid at maturity, but that he will pay it if he be given a certain time, he makes a binding contract by which he shall get that extension of time. He makes no express stipulation as regards payment by notice; surely he ought to be held, in that case, to have waived notice, when he has received all the consideration, and made all the terms that include notice, and when he has got relief by the notice, knowing that the bill may be dishonored at maturity. The other case the hon. gentleman refers to, is that of a man who ought to have given notice, but, not having given it, afterwards promises to pay. It is not held that he has

made no contract with regard to that, but is simply treated as evidence that he has waived the right which would accrue to him of having notice of dishonor, or that he has waived the right of disputing his liability in consequence of the notice not having been given. If I could view the decisions as the hon. gentleman has given them, namely, that he is held virtually to a new contract, he might fairly hold that the subsequent contract should be in the same form as the original contract, namely, in writing. But the subsequent promise to pay is treated as evidence of an agreement to pay, and that evidence is capable of being rebutted.

On section 51.

Sir JOHN THOMPSON. I propose to add the words, "or at any place in Canada, situated five miles therefrom." This is to facilitate the making of protests, and prevent hardship likely to occur in country districts.

Mr. SKINNER. Perhaps it would be well, as far as the Province of New Brunswick is concerned, to make the bill payable at one o'clock on Saturdays. The banks down there generally close at one o'clock on Saturday and a clerk has to be kept there without any reason, for a couple of hours.

Mr. COOK. That is their business.

Mr. CHARLTON. I think we should have a uniform hour in this matter.

Sir JOHN THOMPSON. I think so too.

Mr. CAMPBELL. I think that the closing of banks at one o'clock on Saturday is a great inconvenience to business men. There is more business done on Saturday in our part of the country than during any three days of the week, and I think it would be a mistake to alter the hour.

On section 54.

Mr. DAVIES (P.E.I.) Is there any reason why the acceptor of a bill should not guarantee the genuineness or validity of the endorsement as well as the genuineness of the signature? It seems to me that the one should be considered to be guaranteed as well as the other.

Sir JOHN THOMPSON. We will let the section stand.

Mr. MONCRIEFF. The drawer, in his own favor, certainly, after he has accepted the bill, should be stopped from denying his signature, but should the bill pass fraudulently into the hands of another party who forged the endorsement, the acceptor should not be stopped from denying the genuineness of the endorsement.

Mr. KIRKPATRICK. The bill may be endorsed after the acceptance and that is the endorsement that the acceptor does not guarantee.

On section 60.

Sir RICHARD CARTWRIGHT. It appears to me that this clause is one which should not be adopted without very grave consideration. If I understand its meaning, a bank would be discharged from all liability, and the honest owner of the bill be defrauded of the entire sum to which he is entitled without having any recourse against the bank. Apparently, the bank is to be discharged from liability if it pays a bill on which an endorsement has been forged. I do not think it is desirable to relieve the bank in such a case. It is the business of the bank to see that they do not pay on forged endorsements or without proper authority. I do not see why the Minister of Justice has introduced this provision, but I certainly think that the present law is more in the interest of the public, and that the banks, to which we have given considerable privileges, should be called upon to see for themselves that they do not pay on forged endorsements.

Sir JOHN THOMPSON. This provision has been inserted in the English Act in order to relieve the banks from this liability, on the ground of the great convenience which they are to the public; but in this Bill the provision is inserted and brought before the Committee rather in order to obtain the opinion of the country on the subject. For my part I have no strong opinion in regard to it, and, if the House is not prepared to consider it this evening, I will allow it to stand.

Mr. WELDON (St. John). This has been the law in England since 1853. It is a question of considerable difficulty, and this entirely changes the principle which has hitherto prevailed in this Dominion.

Mr. MULOCK. I quite agree with this provision. I think, when people draw cheques payable to order on banks in which they are depositors, they not only use the bank as an agent to pay money to somebody else, but they cast upon the bank an obligation which it is not bound to undertake—to see that the transaction is a correct one. If cheques are to be handed around to any number of persons, how is the bank to know whether the signature is genuine or not? Of course, the bank is bound to know the signature of the depositor. It has many ways of knowing his signature, but it has no means of knowing whether the signature of the endorser, who may be an entire stranger, is valid or not, and they would be justified in refusing payment, until it was shown that the endorser's signature was genuine. Yet, at present, they would be liable to an action for so refusing. Either a cheque should be made payable to bearer, or the bank should not be compelled to find out the endorser.

Mr. CHARLTON. I cannot agree with the last speaker. If a cheque is made payable to bearer, it may be used as currency, and, in that case, it is the duty of the individual, or the institution paying it, to discover that it is really in the hands of the person to whom it is payable. It is the business of the bank to find out that for itself; and it is easy, when an individual offers a bill payable to order, to require an identification of the person. I think it would be a dangerous innovation if banks were relieved from the liability which they now have in regard to the payment of a forged acceptance or note. The present law works well enough. If a man goes to a bank with an acceptance payable to their order, they are required to have an identification of that man, and it is quite legitimate for anyone in that case to do so; but to say that the banks should be relieved from that liability will be to place in the power of the banks the opportunity to do business loosely and carelessly, and to exonerate them from the consequence of doing their business carelessly. I hope this provision will not be engrafted upon the law of Canada in regard to banks.

Sir JOHN THOMPSON. The subject is too important to finish the discussion before six o'clock, and I, therefore, move that the Committee report progress.

Committee rose and reported progress, and it being six o'clock, the Speaker left the Chair.

25th February, 1890.

House again resolved itself into Committee on Bill (No. 6) relating to Bills of Exchange, Cheques and Promissory Notes.—(Sir John Thompson.)

(In the Committee.)

On section 60.

Sir JOHN THOMPSON. The attention of the Committee was called to this clause by the hon. member of South Oxford (Sir Richard Cartwright), who mentioned that it embodied a very important principle, and I, again, call the very special attention of the Committee to it this afternoon. The effect of the clause is that the bank paying on a forged endorsement is not responsible. I will endeavor to present shortly some of the arguments upon which that proposition rests. The clause has been attacked as being a total reversal of our present law, as it does not provide that the bank shall bear the

loss in any case of forgery. That is not the fact. The clause provides that, if a cheque is regularly drawn, being made payable to order, the mere fact of the endorsement upon it being forged shall not render the bank liable to loss in consequence of the forgery. Therefore we have as the first principle that the cheque must be properly issued, and if it is properly issued, the loss is not to fall upon the bank if the endorsement is forged. That is represented to be a fair principle, because the business which the bank transacts is a business between it and the customer with whom it transacts its business. The proper business of the bank is to pay the money which the customer deposits there at his request, and not to guarantee the intervening transactions between the person who gives the cheque and those who receive it and those through whose hands it may pass. If the maker of the cheque chooses to make it payable to bearer and not to order, he must, in all fairness, bear the risk of its going into hands where it may be improperly endorsed. No such thing can happen in the case of a cheque payable to bearer. Another argument in support of the clause is the liability which the bank incurs in all cases of refusing payment of a cheque. No matter how numerous the intervening transactions may be, and although the endorsers may be entirely unknown to the bank, the bank is called upon to pay on a cheque on which not one of the endorsers can be verified, or to refuse payment at its own risk and liability for damages. I am using the word "cheque" for convenience to represent these documents. I may add that the principle of this clause has been adopted in England and has been acted upon there for thirty-seven years, and I think it is reasonable, in this respect, to assimilate our law to the English law.

Mr. MULOCK. When this clause was before the House on a previous occasion, I expressed my view in favor of it as I then understood it, and, if it were limited to cheques, I would still be in favor of it, but, as I understand, the clause refers also to bills of exchange. The interpretation clause shows, and applies not only to an ordinary cheque for money deposited in the bank, but to a bill of exchange in the widest sense. A person may draw on a bank not by a cheque, but in the ordinary way of business. A bank may be willing to honor a draft, not because there is money of the drawer there, but because the customer does his regular business there. I would ask the Minister of Justice to cut down this provision and make it applicable simply to cheques pure and simple.

Sir JOHN THOMPSON. I have no objection to that.

Mr. MULOCK. I observe that section 63 makes a cheque a bill of exchange payable on demand.

SIR RICHARD CARTWRIGHT. It is important that we should understand exactly what the hon. gentleman intends to do. As I understand this clause, it is not incumbent on the bank to show that the endorser or the payee is the person whose name purports to be on the cheque. This goes to the root of the whole of our present system of cheques. If I make a cheque payable to the order of John Smith, and the bank pays it to somebody who endorses that cheque who is not John Smith, the risk is shifted from the shoulders of the bank to my shoulders. That is my understanding of the clause, though, of course, the Minister may correct me if I am wrong. I have the strongest objection to that provision. I see no reason why these corporations who derive their existence from us, and who get considerable benefit from the Parliament of this Dominion, should be relieved from the liability they now incur, at any rate, as regards the original payee. As regards subsequent endorsers something might be said; but that the hon. gentleman, as I understood, should allow any bank or person to escape liability by reason of a forged endorsement of the name of the original payee, seems to be a most objectionable thing, and one on which I, for my part, will certainly divide the House at a later stage. I do not think any sufficient reasons have been advanced, except the convenience of the banks themselves, and I submit that the convenience of the general public is of much more importance than the convenience of the banks. I do not believe that any considerable loss has occurred to them from the existing state of the law, and I think that before such a very material change is made, a much better reason should be given than the Minister has, as yet, brought forward. In fact, as I understood him to say, he was not himself much wedded to this innovation.

SIR JOHN THOMPSON. The hon. gentleman was not in when I explained the clause this afternoon.

SIR RICHARD CARTWRIGHT. No, I have just come in. But I ask the hon. gentleman whether I was not correct in supposing that under this clause the bank was discharged from liability, even in the case of the original person to whom the cheque was made?

SIR JOHN THOMPSON. Yes.

SIR RICHARD CARTWRIGHT. Then it revolutionises our whole system of cheques, and I do not think such a revolution should be made without a much better reason than I have heard adduced as yet. It is a great convenience to the mercantile public, and to private persons who do business with banks, that they should know that, when they give a cheque to a particular man, the bank should take reasonable precautions to identify that man, and I do not see

why they should be relieved of that duty from existing provisions of the law.

Mr. JONES (Halifax). I think the Minister should show some reasons for this change. Does the recommendation come from the banks? Has there been any agitation among the bankers, or is it an idea of my hon. friend himself? Because it has been followed in England for a number of years is no reason why we should adopt it. There are a great many English laws which are applicable to their condition which would not be applicable to ours, and this change, it appears to me, is one of them. As my hon. friend in front of me (Sir Richard Cartwright) has observed, we have found great convenience in this country in transmitting cheques from one party to another, and generally without any of the inconvenience which the hon. gentleman is providing against. But I submit that whether the fact that a bank is henceforth to be relieved from the result of forgery, will not in a measure tend to create forgery. If people, knowing that they have got to go through the inspection of the bank officials, knowing the difficulty they will have to meet, are disposed to present a cheque that is not properly endorsed, and are deterred by these precautions, when that supervision is taken away, as it will be, under the operation of this Bill, it is a question whether people so disposed may not actually be more disposed to run the risk than they are under the present circumstances. The banks, I contend, are responsible for the signatures of their customers, and they should be responsible for seeing that the cheque or bill is properly endorsed. You might just as well relieve the bank from the responsibility of paying a cheque that was drawn or forged in another man's name. I cannot see that a distinction can be made in this case. If the banks are careful, and are bound to see that the cheques are in the signatures of their customers, I think they are equally bound to take every precaution, in the interest of the customers with whom they deal, and the public generally, to see that these cheques are properly endorsed before they are paid; otherwise I think it will lead to a great increase of forgery in that direction.

Mr. SPROULE. I notice that the local press, at least in the section from which I come, appears to be almost unanimous in condemning this proposed amendment to the law, and the few business men with whom I have had an opportunity of conversing, also condemn it. They think it is shifting the responsibility from the banks to the shoulders of the parties against who are made the drawers of these cheques, and that it will make the banks much more careless. They have now such ample control over the financial operations of the country and over business men, that it is used many times to the

disadvantage of the business man, and to give them the advantage of this proposed amendment would be giving them even greater powers over business men than they are entitled to have.

MR. BLAKE. Our course of business is not exactly the same as that in England, and we make a much wider use of cheques than is made in England. They have a system of crossing cheques which does not exist here, or exists but to a small extent. It does seem to me, that unless the hon. gentleman is prepared with proofs furnished him of the inconveniences which have been actually shown to exist from the present system, there is no ground for the change. If the suggestion is that the banks are placed in very great difficulty, that their duty to their customers and the exigencies of business oblige them to receive cheques which are forged, and that consequently great losses accrue to them, why, that is a state of things that ought to be considered. But we have before us no information that that is the condition of things, or that the banks have found it a serious obstruction or a difficulty to have this responsibility imposed upon them. I must confess, that I should view with great reluctance the removal of that responsibility, at any rate, in so far as it is connected with the genuineness of the endorsement by the persons to whose order the cheque is made—subsequent endorsements may be open to a different consideration. But that the drawer of the cheque should lose his money because the person in whose favor he has drawn it does not genuinely endorse it, or because it is endorsed otherwise, I do not see. Unless, therefore, the hon. gentlemen is able to show that the course of business throughout the country is seriously inconvenienced, that there is a serious difficulty in the banks carrying on their business, I, for my part, am disposed to give my vote for the continuance of the present law.

MR. WELDON (St. John). There is a good deal of argument on both sides. I think there are very good reasons why this change should be made. With regard to these cheques on bankers standing differently from bills of exchange or promissory notes, a good deal may be said. The cheque is drawn upon the banker; originally in England it was only drawn payable to the bearer. In 1853, I think for the first time, this rule was introduced, when cheques payable to order were allowed. Now, there is a broad line of distinction. The bank is supposed to know the signature of the person, therefore they are responsible if they pay a cheque which has been forged. If the cheque is endorsed by individuals of whom they know nothing the bank is placed in this dilemma: either they have got to refuse that cheque and run the risk of an action, or they have got to pay it and bear the loss. The advantage of drawing a cheque payable

to order is, that it enables the drawer to have a voucher, and he draws the cheque in this form to suit his convenience. If it is for his benefit, why should he not take the responsibility? With regard to the changes made in England, I find the reasons succinctly stated by Chief Justice Cockburn, who was probably member of Parliament at the time the Bill was passed, and the reasons given by him in the case of *Charles vs. Blackwell*, were these:

"Now, the purpose of the enactment we are dealing with was, when cheques payable to order were expected to become general, to protect the bankers against the possibility of forged endorsements. The only reason why cheques had not been drawn payable to order before being, as I have stated, the expenses of the stamp, when the Stamp Act of 16 and 17 Victoria included these cheques among those which should be subject to the penny stamp, it was, of course, foreseen that the great convenience arising from the use of such cheques would make them of constant recurrence. It was equally certain that the use of cheques drawn to order would expose bankers to serious danger from forged endorsements, payment upon which, as the law then stood, would have been to their own loss. It was against this danger that the 19th section of the Act was intended to protect them. Against forgery of the writing of his own customers, the banker must be assumed capable of protecting himself. He is, or ought to make himself, acquainted with the signatures of his own customers. He cannot be acquainted with the signatures of whole multitudes of payees or agents who have to endorse cheques drawn upon him, and made payable to order. It was not unreasonable, therefore, that while the customer obtained the advantage of being able to draw cheques payable to order, the possibility of forged endorsement should be, as between him and the banker, at his risk. By making a cheque payable to order, the drawer obtained the advantage that if the cheque is stolen or lost before it reaches the payee, it cannot be paid without a forged endorsement, the risk of which many persons, who would not scruple to present a cheque payable to bearer, in fraud of the true owner, and pocket the proceeds, might yet be unwilling to run. Furthermore, he obtains, through the endorsement of the payee, an acknowledgment of the receipt of the cheque and of its payment. Obtaining this benefit, it was but reasonable that the possibility of a forged endorsement should be at his risk, or, at all events, be a question between him and the payee, leaving the banker free from liability."

There is very great force in this reasoning. While a banker is supposed to become acquainted with his customer's handwriting, the drawer of a cheque should assume some responsibility; and when a customer draws a cheque payable to a party whom the banker does not know, and the cheque is presented at the bank drawn in that form for the customer's own benefit, he should take the risk as he receives the benefit. The bank is placed in this dilemma: If it pays the cheque, then it is liable for the loss; if the bank refuses the cheque, then it runs the risk of an action being brought against it for dishonoring a good cheque.

Mr. PATERSON (Brant). I have no doubt it will be a matter of convenience to the banks to have the change proposed; but, on the other hand, the interests of the general public must be considered. Unless it can be shown that a great inconvenience will result to the

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banks, a change so great as this should not be adopted. While I can add little to the arguments already adduced, I speak in order that the Minister may understand that this is a question in which great interest is taken and, if the change is not particularly demanded, the hon. gentleman should consider carefully the expediency of making the change. While the bank runs some risk, and in some few cases, loss, although in a mercantile life extending over a great many years, I know of only one case where the bank has suffered loss. It must be borne in mind that this system contributes business for the banks. A large amount of money is paid in this way, solely on account of the security given to the person drawing the cheque, and if you should wipe out that security and make every cheque or bank draft to order no greater security than an open cheque payable to bearer, the question arises whether you would not draw business from the banks, and find that payments were largely made through express companies instead of through the banks. So, while the banks run some risk, the present method means profit to those institutions. I submit that this is an additional argument against the change proposed. I feel positive that in many cases the change proposed would result in withdrawing what is a profitable business to the bank, and that the express companies would be found transmitting large sums to parties which otherwise would have been remitted through the agency of banks.

Mr. CAMPBELL. I quite agree with the remarks of the hon. gentleman who has just addressed the House. It would be a great mistake to make the change contemplated in this direction, and the convenience of the public should always be considered in preference to the convenience of the banks. This system is of great convenience to the public, and it has been generally adopted by the people on account of the security given, by the bank being obliged to see that the signature to the cheque is a genuine one. Unless it could be shown that the banks have lost very largely, it would be very unwise to make the change contemplated. Moreover, when a system has become general and the public have got accustomed to it, it is always unwise to change it and adopt a new mode of business with which the people are not acquainted. It is especially a convenient system of remitting money from one part of the Province to another. From the town in which I live, you can send a cheque payable to "John Smith" in Toronto, or elsewhere. He presents it in Toronto, and if the bank does not know him, they can require that he be identified. The people have become accustomed to the system, and unless it can be shown that there has been great loss and inconvenience, it would be unwise to change it. I do not think the banks

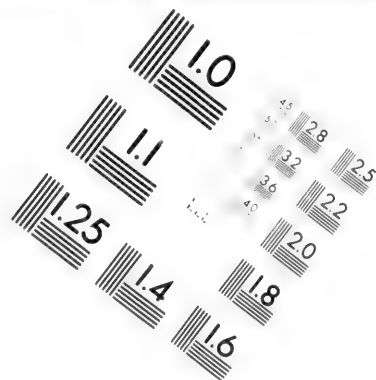
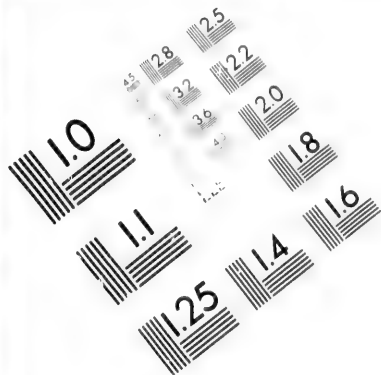
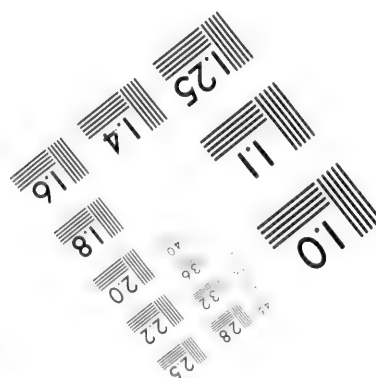
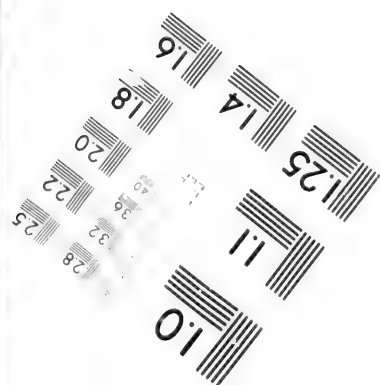
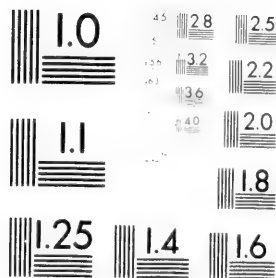


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should be relieved from the responsibility under which they rest at present. The banks are not compelled to do this business unless they find it profitable, but, if they do it, they should not be relieved from that responsibility. I sincerely hope that the Minister will not press this clause, but that he will allow the law to remain as it has remained for many years, and which the people of the country understand and appreciate. I certainly think that it would be very unwise to make the change contemplated.

Mr. EDWARDS. I cannot hope to add anything of importance to what has been said on this question, but I wish to express my sincere desire that the hon. Minister of Justice will see his way to not enforce the change now contemplated in this respect. In my opinion, if this change be made it will disturb the commerce of the country to a very great extent indeed. I cannot agree in the opinion that this idea is only for the protection of the person who gives the cheque, for I believe, that it is very largely intended for the convenience of the receiver of the cheque. In my business I draw a great many cheques, and I always ask the party to whom I give a cheque, "Will you have this cheque payable to bearer or to your order?" In almost every case the party receiving the cheque wishes that it should be made payable to his order, for the reason that if he loses the cheque he will be protected. If this proposed clause becomes law the finder of a lost cheque may go to the bank, and if the bank will pay the money, he will receive it and the responsibility is removed from the bank entirely. In the neighborhood of our place of business there is no bank, and a great many people come to us and deposit their money, and ask us to give our cheque for safety in remitting. So far as the bank is concerned, my opinion is, that one of the first motives of a bank should be to protect its own customers. I can hardly believe that the banks desire such a change as this. Of course it is generally understood that the presenter of a cheque has got to be identified, and the onus is on the bank; but what would be desirable would be to make the law so that the presenter of the cheque would be compelled to identify the endorsement if requested. So far as this line of endorsement goes down from one person to another, it is almost always the case that when a cheque is endorsed for the second or third time it gets into the hand of some commercial man whose endorsement is well-known and who has a bank account. When he goes to his banker and deposits that cheque the responsibility is on him, for he guarantees the previous endorsements. So far as I am concerned I think it would be a very serious evil indeed, if this change is made, and I sincerely hope it shall not be made.

Sir JOHN THOMPSON. The hon. member for Russell (Mr. Edwards), when he referred to the convenience of the present system, has stated all that can be said in its favor. In proposing by a Bill to regulate the relations of parties to bills of exchange and promissory notes, and, so far as this question is concerned, the relations of bankers to their customers, I suppose it is not fair to impose a liability upon the banks for the convenience of a portion of the public with whom it has no dealings whatever. We provide completely for the relations between a bank and its customers when we propose that the responsibility shall fall, as it does now, upon the bank, if the signature to the cheque is not genuine or duly authorised. But it is but just to provide that the signature of the customer of a bank having been put to that cheque, he issues it at his own risk when he makes its payment depend upon the endorsement of other persons with whom the bank has no dealings, and whose signature the bank may have no opportunity of identifying. Should we make the loss fall on the bank for the convenience of persons who have no dealing with the bank? If we do so, I think we would put the loss on the wrong shoulders for the convenience of the public, and at the expense of one of the parties to the transaction.

Mr. BURDETT. The hon. Minister does not state what justification there is for changing the law.

Sir JOHN THOMPSON. I have stated the justification. I was quite aware that the Committee did not hear me very well, as there was confusion in the chamber. The hon. member for St. John stated the reason fully in his argument, while the case against it depends, as was said by the member for West Durham (Mr. Blake), on the inconvenience of making the change. I admit that inconvenience, but when we are adopting a system as we are now in consolidating the law with regard to bills of exchange and promissory notes, I think we should place the relations of everybody concerned in these instruments on a fair and just footing. The argument in favor of the change, when we are coming down to first principles, is, that it is but fair that the responsibility of a bank, as the agent of the person who draws the cheque, should depend on and be limited to the genuineness of the signature which the customer appends to his cheque, and that it should not be responsible, when he, for the convenience of payment, for the convenience of having a second voucher, or for the convenience of his friend who deposits money in order to get a cheque payable to order. We provide that the bank should not be subject to the risk of perhaps a dozen intermediate endorsements by parties, not one of whom may be known to a single officer of the bank. It seems to me that we are putting the matter on a

fair basis, when we limit the responsibility of the bank to the genuineness of the signature, and the genuineness of the authority of the person who has signed the cheque. I think it is but fair that we should provide that it shall either be the signature of the person who professes to draw it, or the signature of one who has due authority in that regard. When we have found that the owner of the money has drawn the order that the money shall be paid, the agent ought to be protected from all liability when he complies with the demand, of what appears on its face, to be the proper authority to pay the cheque. This argument is strengthened, when we remember that the bank has no protection, no means of verification, no communication with any of these intermediate endorsers, but is liable to an action at law if it dares to refuse payment of a cheque on an authority which it suspects may be a spurious endorsement. There is one other observation which I forgot to make and which, to some extent, meets the argument of the member for West Durham (Mr. Blake). The hon. gentleman was good enough to call attention to the fact that there exists in practice, a marked difference between the use of cheques in this country and in England, in this particular, that a system of crossed cheques has grown up in the mother country, and has not yet been established here. Dealing with this matter, as I have said, upon fundamental principles, as we are endeavoring to do, we are providing side by side with this provision all those provisions which relate to crossed cheques. What will be the position of the hon. member for Russell? He can draw his cheque, he can still draw it payable to order; he has only to cross his cheque in accordance with the provisions of this Bill and every one who takes that cheque knows that it can only be paid by the bank on which it is drawn to another bank. The hon. member therefore has but to draw two lines across his cheque, and mark "bank" on it, and that cheque must go into some other bank before it can be paid by his own bank. That being so, every person into whose hands that cheque may come, fraudulently or otherwise, knows that he must go to some bank and establish to the satisfaction of that bank his authority to receive that money to such an extent that the second bank will pay. He has only to do that in order to check to a very great extent the danger which would arise from a false or fraudulent endorsement. A person who makes a cheque payable to order does so either for his own convenience or that of the payee, and thereby imposes on the bank additional risks and obligations; and if he neglects to draw two lines across it and mark "bank" upon it, and in addition to that, desires that the bank should run the risk of loss from a forgery in an endorsement, he desires to establish a principle which appears to me to have nothing to commend it.

Mr. BLAKE. It will be observed that no answer has been given to the appeal made by several members to the hon. Minister to state whether this change is proposed upon information which the hon. gentleman has verified as to the existence in the past of considerable inconvenience and loss resulting from the existing practice; and, therefore, up to this time, we are to understand that we are dealing with it—as the hon. gentleman himself put it—upon first principles upon the question as to what is abstractly right or best. I do not myself think that, after the very long experience we have had of one system, we can ignore the practical result of that system, and I do not think it is reasonable to suggest theoretical inconveniences or risks of a grave character as a sufficient ground for altering the law of the land as it has been for a great number of years, and to which the people have adjusted their commercial transactions. My opinion is that a very good test under these circumstances is the test of experience, and if it has been found that the banks are exposed to very serious inconveniences or risks—on the one hand, risk of an action because they refuse payment of a cheque which turns out to be properly endorsed, or, on the other hand, risk of a loss because a cheque, which they have no means of verifying, turns out to be improperly endorsed—or if it has been found that the security which the general public dealing with the banks has had up to this time, and under which they are carrying on the money transactions of the country, is insufficient, we want some statistics to show to what extent that has been the case. But, in the absence of proofs that there has been any serious inconvenience or loss in practice, I decline to accept theoretical reasons of hardship as a ground for altering the law.

Mr. DESJARDINS. My limited experience in banking leads me to believe that there is no such inconvenience experienced as to necessitate a change in the law. The banks are willing to accommodate their customers, and to accept any risk for the endorsements of the cheques which they receive. It is a very common practice for customers to make their cheques payable to order, and they know very well that but for that arrangement the person receiving the cheque would have no security against loss by the cheque getting into wrong hands. He knows very well that the accommodation the banks are willing to give would be minimised to such an extent that their customers would suffer considerably. As far as my experience goes, there is not much danger of cheques being paid to the wrong persons. Every bank has its own customers and its own means of identifying those who ask payment of endorsed cheques so that I think this change would be neither in the interest of the customers nor of the banks.

Mr. KENNY. This matter of conducting the business of the country by cheques is one which, of course, concerns the commercial community more particularly, and I can readily understand that there should be great objections to any innovations. I note specially the remarks of the hon. member for Russell (Mr. Edwards), but in considering this question, there seems to be a disposition to throw all the responsibility upon the banks. The hon. the Minister of Justice has explained to us that in a subsequent section provision is made for adopting the system of crossing cheques, and if the hon. member for Russell, when one of his customers desires a cheque on exchange for the money deposited in his hands, will simply cross that cheque after he has signed it, he will then protect himself and his bank. There is no place where the system of cheques prevail to such an extent as in England, and in no city to such an extent as in London, and the extent to which the system prevails there is largely due to the fact that they have adopted this system of crossing cheques, whereby a cheque can only be cashed by a bank. This is a great protection to the customers of a bank, and also to the bank, and, as a commercial man, I must say that if we can adopt the system, which is equally convenient to us as the system which prevails to-day, and at the same time give more protection to our banks, without causing ourselves the slightest inconvenience, it is only fair that we should adopt it. This system of crossing cheques, English experience shows us, is a better system than the one which prevails in Canada to-day, and is not only a protection to the bank, but is equally convenient to the customers of the bank; and, therefore, as a commercial man, obliged to use these cheques, I think that if we would incorporate the system of crossed cheques it would be a very great improvement.

Mr. BLAKE. While I do not at all object to the introduction of the system of crossed cheques, I do not think that in the present condition of banking in this country, with reference to agencies and so forth, and the use made of cheques in this country, it is to be expected that the inconveniences we are now discussing will be removed by the introduction of this system. To a very large extent they will remain. It will be very useful, indeed, in large cities where there is a number of banks, but it would not be found applicable or convenient in a large portion of our transactions outside of large cities, in the rural districts.

Mr. PATERSON (Brant). This clause will operate in favor of the banks in this way: If you wish to make from Ottawa a payment in Toronto, and draw your cheque payable to order and send it through, under this clause your cheque will be no security, and the

result will be, in order to secure safety, you will have to give the bank 25 cents to get a bank draft. If my hon. friend were interested in banking, I would say that it would operate to his advantage.

Mr. BURDETT. He is a bank president.

Mr. PATERSON (Brant). His plan would result in business being given to the banks at the expense of the general public. As the hon. member for West Durham (Mr. Blake) has pointed out, before such a radical change as this is made in the system which has been carried on for thirty or forty years, there ought to be examples of hardship or loss shown. Every business man knows that when he pays an account by a cheque payable to order, he does not care whether he gets a receipt or not. The cheque is a receipt. But the hon. gentleman is going to oblige the general public to be careful in every case to take a receipt for the money, and is going to infuse into commercial circles a feeling of insecurity with reference to remittances. He will force people to buy bank drafts, in order to be secure, instead of sending cheques payable to order as they do now. I am sorry to see the hon. gentleman taking such a ground. I fail to see the force of the arguments he addressed to the Committee, and I would say, with the hon. member for West Durham, that we should not deal theoretically with this matter, but if there has been no inconvenience and no loss, we should stick to what has been found to work well in practice.

Mr. TISDALE. I feel strongly that this clause is a step in the wrong direction. I have had some personal experience in dealing with banks, and I have yet to learn that anybody who has a bank account worth having has any difficulty in getting a bank to take it, under the law as it is now. As has been already remarked, these cheques payable to order serve as receipts, and we have heard no complaint of loss on the part of the banks under that system. If there were any complaints, we might then consider the question of crossed cheques. Our system of banking here is quite different from that in England. Our banks make a great deal more money out of their customers than do the banks in England, as we have more discounting and a different class of bank accounts. I would regret very much to see this clause retained in the Bill. The bulk of the Bill is very excellent, but, until there is a greater demand or more reason shown why the banks should have this protection, or why they themselves require this change, I would regret very much to see it become law.

Mr. WALDIE. I was about to say that our business is done with towns and villages where there is no branch of a chartered bank. If crossed cheques are necessary, they would have to be returned to

Toronto to be cashed. Now, these cheques are passed to the different merchants in the different localities, they are forwarded by them to their correspondents, and by those correspondents they are forwarded to Toronto. It would cause a great deal of difficulty and great inconvenience to us if this Act were amended as it is proposed. It would be of great inconvenience to our employees and to others to have marked cheques which could only be cashed through a bank.

Sir JOHN THOMPSON. I do not think that would be the effect of requiring the cheques to be crossed. The hon. gentleman will see that it would not be necessary for them to come back immediately to the bank in Toronto or to come back earlier than they do now. The only effect of this provision is that they must be presented at another bank than that on which they are drawn. Taking Algoma and Muskoka, to which I understand the hon. gentleman refers, the effect of the provision would be that the merchants who cash those cheques would be very careful as to the authenticity of every endorsement.

Mr. WALDIE. The effect would be that we would have to stop making payments in this way. The people to whom the payments are made are not so well known as the hon. gentleman supposes, and it would, therefore, stop our business if it were done in that way.

Sir JOHN THOMPSON. In reference to the remarks of the hon. member for Brant (Mr. Paterson), I may say that I do not think this would have the effect he seems to expect, of sending all this business to the banks in the sense that every one who was going to a distance would have to get a bank draft instead of a cheque, because, as he will observe, a bank draft is subject to the same restrictions as a cheque. The cheque drawn by one bank on another is as much subject to the provision of this Bill as any other cheque, and, therefore this could not have the effect of sending business to the banks. As to the inconveniences arising from the present system, every one knows that not a month passes without a bank being subjected to loss by virtue of the law being as it now is, and that without any fault of the bank and without the bank having any means to protect itself. In regard to the statistics which have been spoken of, if I gathered up the statistics on this point, what would be gained? The question of inconvenience, great or small, is a relative question, and it would, of course, be said that the banks are better able to bear inconvenience and loss than their customers are. But the question is not one of convenience or statistics. The question is whether the provision is right or wrong. If it is not right in principle, though it has not been assailed by the hon. member for West Durham (Mr. Blake) as being wrong, that is another question,

but I believe I can recommend it to the Committee by arguments which will show them that it is right, though some people prefer to shift a loss to the shoulders of a corporation rather than bear it themselves. I am not going to submit any statistics on this subject, or to urge it on the Committee because the banks are interested in it. It goes without saying, that every one who is interested in banking would desire to see this provision passed; but that is no reason for its place in the Bill. The reason why it is here is that we thought it right to adopt it. I have been twice asked why I did not show who urged the adoption of such a provision. Will it commend the provision of this Committee any more to say that the banks are in favor of it or are not in favor of it? If there were no better reasons to urge, I would have abandoned it an hour ago. However, I am convinced that the weight of opinion in the Committee is against the clause. It has been said that I am wedded to the clause. I am not wedded to the clause. We are here to make the best Bill we can, and I am grateful to the Committee for the free discussion which has taken place. I propose to allow this clause to stand for the present, and if, on further consideration, the Committee is not convinced that it is right by what I have said in favor of it, I shall withdraw it.

It being six o'clock, the Speaker left the chair.

AFTER RECESS.

House again resolved itself into Committee on Bill (No. 6) relating to Bills of Exchange, Cheques and Promissory Notes.—(Sir John Thompson.)

(In the Committee.)

On section 69.

Mr. McMULLEN. Is there any provision made with respect to the security?

Sir JOHN THOMPSON. No; we cannot define that similar clauses with respect to security and actions on lost instruments are clauses which are now in force in all the Provinces, and the sufficiency of the security is to be determined on the trial of the action. It is impossible to define what amount of security shall be given, or what kind of security. If on the trial of the cause the security offered shall be proved to be sufficient, the party recovers; but it is left to be determined as a question of fact.

On section 75.

Mr. BURDETT. There was a case in the Central Bank recently,

where a party received a cheque which had been marked, but he never received the cash, and it was held that the drawer was discharged. I presume this is an exact copy of the English law, and probably it had better be left to its course, and no change made for cases like the one I have mentioned.

Sir JOHN THOMPSON. The drawer at common law was discharged entirely if there was any delay at all in presenting the cheque. This is intended to relieve the drawer *pro tanto*, to the extent of the damage suffered.

On section 76.

Mr. McMULLEN. What is the reason for introducing this change in the present banking system? So far as I have ever heard, the system of doing business by cheques has been generally satisfactory, and any disturbance in the present arrangement would cause considerable confusion. I understand that banking institutions may possibly have suggested the change, but before we make a radical change of this sort it would be well for us to know the necessity for it.

Sir JOHN THOMPSON. There is nothing compulsory about this, and, therefore, it does not make any change in the law. As the hon. member will see, one can now draw a cheque in any form he pleases, and subject to any condition he pleases. This is but a convenient provision which, put on the face of the cheque, will notify the holder how it can be cashed. It is the form which is in existence in Great Britain and most other countries. Not only is the system of crossed cheques in use in the mother country, but, to a limited extent, it has been in use here, especially in the case of cheques issued by Canadian banks payable in England.

Mr. McMULLEN. Is there any system of this kind in force in the United States?

Sir JOHN THOMPSON. I cannot say.

Mr. BURDETT. It is in use in some of the States.

Mr. WALDIE. If this system is adopted generally, it would obviate some of the objections we made to the other clause. It is a permissible provision, I suppose?

Sir JOHN THOMPSON. Yes.

On section 80.

Mr. PATERSON (Brant.) Suppose a crossed cheque is given by one person to another, the person receiving it cannot present it at the bank where it is payable, but must present it at another bank. Is the bank at which he presents it bound to cash it? If it does not, and he cannot get it cashed by the bank on which it is drawn, what is his recourse?

Sir JOHN THOMPSON. Of course he need not take the crossed cheque. If he does take it, he knows he takes it subject to his chance of getting it cashed by a bank other than that on which it is drawn. In effect, he takes a cheque subject to that limitation.

Mr. PATERSON (Brant). One other question. Suppose a crossed cheque is presented at a bank and the bank cashes it, and by the time that bank presents it to the bank on which it is drawn, it is found that there are no funds there, in what position is the second bank?

Sir JOHN THOMPSON. The second bank has recourse against the drawer only. It takes the risk of collecting funds from the bank on which the cheque is drawn. But the holder of a cheque, under no circumstances, can present it for collection, and the bank will at once ascertain whether funds are available or not.

On section 82.

Mr. WALDIE. If a bank is negligent in forwarding a cheque, would it not be liable for that negligence?

Sir JOHN THOMPSON. This section is merely to provide for the case of a bank collecting for a customer, in which case the bank shall not be liable, provide it acts in good faith.

On section 86.

Mr. McMULLEN. Where an endorsed note is held as collateral security to any instrument, in order to hold the endorser without protest, there should be some note on the bank that would settle the point between the parties, and show that the assent has been given.

Sir JOHN THOMPSON. That is a question of fact which has to be proved.

Mr. KENNY. Supposing the maker presented his note as collateral security, and the endorsement was satisfactory, how would the assent of the endorser be obtained to continuing the security?

Sir JOHN THOMPSON. In any way that any contract may be made—by act, word, or instrument under seal.

Mr. WALDIE. Where the holder of the note given as security extends the time of payment, I think the endorser should have some notice of that extension.

Mr. DAVIES (P. E. I.) If the extension is given without the consent of the endorser, then the endorser is no longer liable.

Mr. McMULLEN. Supposing a man wants to borrow ten thousand dollars from a bank and gives an endorser as guarantee to that extent. He will draw the funds as he requires them, and meet his notes by other paper put in for discount. That may continue for

years, and if the endorser is to be held as a continuous running security and is willing to assume that risk, that should be stated on the instrument by using the words "waive protest" or in some other form. Otherwise, it would be difficult to prove his assent.

Sir JOHN THOMPSON. What the hon. gentleman suggests is no doubt what the bank would do as a measure of prudence under the circumstances. But it may be done in other ways with perfect validity. It may be that the endorser derives benefit from the continued security. It will be a question of evidence to prove that he was in some way a party to the transaction before being deprived of his right. The burden of proof will always be on the bank, and that is the best security that the bank will take precaution to have the evidence clear.

On section 89.

Mr. WHITE (Renfrew). Why is a distinction drawn in this 4th sub-section, which says :

"Where a foreign note is dishonored, protest thereof, except in the Province of Quebec, is unnecessary."

Sir JOHN THOMPSON. Merely because that is now the law of the Province of Quebec, and it was thought best, in drawing this Bill, to avoid altering the law which is peculiar to that Province in regard to bills and notes, except where it could be done without inconvenience. It was represented to us that the law, in regard to protesting foreign as well as inland bills, should be continued. That representation came not only from the professional notaries, but also from the banking institutions.

Mr. WHITE (Renfrew). I understood that the last time this Bill was before the Committee, the Minister of Justice took the ground that the fees for the protest of notes should be the same all over the Dominion, which must result in very much increasing the fees in Ontario, if they are to be the same as those in the Province of Quebec. I think that principle should be applied to this section, and that the law should be made uniform throughout the Dominion.

Sir JOHN THOMPSON. I said that it was the object to make the provisions of the Bill uniform wherever we could do so. I think, however, that we will have to abandon that view as far as the fees are concerned, and that the better course will be, both as to the requirement of a protest and the fees connected with a protest, to leave the law on both sides as it was before,—that is, the law in Quebec on the one side, and the English-speaking part of the country on the other.

Mr. WALDIE. It seems to me that when foreign bills are pro-

tested, they should not be treated in different ways in different parts of Canada. They ought to be treated in the same way everywhere.

Sir JOHN THOMPSON. So they are.

Mr. WALDIE. If there is a necessity for protesting a foreign bill, it should be under a general law.

Sir JOHN THOMPSON. This has only reference to the fees.

On section 93.

Sir JOHN THOMPSON. The object of this is to show that by the use of the word "protesting" it is not intended that the extension should be necessary, provided it is noted in the protest.

Mr. SPROULE. This clause seems to make provision for the protesting. A good many people hold the opinion that a Bill ought to be protested without employing a notary public to do it. There ought to be a provision allowing a bank clerk to protest a note the same as in the old country. I see that several papers advocate it, and a good many business men think it ought to be done. By that means you could do away with the cost of the protest, which is a considerable item in many instances. In certain localities it is impossible to get a notary public without going a long distance. I see there is a provision here that a magistrate may do it, but I think it might be left to a bank clerk or any person.

Mr. DESJARDINS. I think it will tend to prevent many negligent people from paying their notes, or from providing to meet them in some way. It is a good inducement to people to fulfil their engagements.

Mr. SPROULE. I hold the object of the protest is simply to notify the endorser that the note is not paid, and to hold the security good. It is a notice to him that the party who is liable for it has not paid it, and it is for his interest to see that the note is paid.

Sir JOHN THOMPSON. That is not the only function of a protest. I think if the hon. member will reflect upon it, he will see that the one class of persons, above all others, who ought not to be allowed to make the protest, would be the people in the bank.

Mr. SPROULE. They do it in England.

Sir JOHN THOMPSON. They have done it in England. They have there the same provision we have here, that where a bill is dishonored and the services of a notary cannot be obtained at the place where the bill is dishonored, any householder or substantial resident of the place, may, in the presence of two witnesses, give a certificate, signed by him, protesting the dishonor of the bill. It is not for the purpose of notifying the parties, but it is to establish, with some degree of notoriety, that dishonor has taken place, that being the most important step in the history of the bill, but a fact which

requires to be proved afterwards, and to which some degree of notoriety must be given. We have on our Statute-book at present a provision that whoever shall make a protest, and whatever may be the circumstances under which it may be done, it shall not be made by the bank, as the bank might be the party interested, and such party might manufacture evidence of facts which did not exist. The hon. gentleman will see further, that the principal effect of the present law is to be able to establish afterwards, in a court of law, the fact of dishonor and due notice by the protest itself. We have done away with the necessity of calling witnesses, by providing that the protest can be put in as evidence; but if you leave the matter to an interested party, to an officer or clerk in a bank, who may have neglected his duty in regard to giving notice, to make the evidence afterwards, the whole question is left at the mercy of even the humblest clerk.

MR. DESJARDINS. It would be more satisfactory to everyone concerned to have an independent officer outside of the bank to make the protest.

MR. SPROULE. I have here an opinion written by an eminent authority, in which it is stated as follows:—

“The necessity for a legal gentleman’s services in this regard are not necessary, and we trust the English system, of having a junior clerk of the bank send the circular notices after the teller has certified that the document was presented and not paid, will be adopted instead.”

SIR JOHN THOMPSON. He is writing on a different subject, the giving of the notice of dishonor.

MR. WHITE (Renfrew). The law should be left as it is at present, and the notice should be given by notaries. This provision is very good where notes are made payable at places where the services of notaries are not available; but, there are some parts of Ontario where justices of the peace are not quite so thick as they are in the Province of Quebec, and it might be difficult to obtain the services of a justice of the peace to protest a note when the services of a notary were not available.

SIR JOHN THOMPSON. The provision with respect to justices of the peace is taken from the Code of Lower Canada. There is choice only between adopting that provision, or the English provision, which provides that the duty may be performed by any householder or substantial resident.

MR. WHITE (Renfrew). I think it would be better to go to the extent of the English law, as in some villages in country places it might be impossible to obtain the services of even a justice of the peace for the protesting of a note. I agree that wherever notarial

services can be obtained they should be utilised, but when they cannot be obtained, and in some instances when the services of a justice of the peace might not be available, in those cases the clauses in the English Act might very well be adopted.

Mr. LANGEIER (Quebec). I wish to call the attention of the Minister of Justice to a discrepancy which might occur, if it is intended this Act should repeal the provisions of the Civil Code of the Province of Quebec. There is a provision passed by the Old Parliament of Canada in 1866 which says, that no provision of the Civil Code will be held to be repealed by a statute, unless the particular article of the Code is expressly mentioned. I am not prepared to say that this Parliament is bound by that provision, but I would call the attention of the Minister of Justice to the enactment in question, which he will find in the Statutes of 1886.

Sir JOHN THOMPSON. I think the hon. gentleman will find that the Bill makes provision in that regard. All those articles of the Civil Code which are interfered with, are enumerated in the third section of the Bill.

Mr. LANGEIER (Quebec). I suppose that will provide for the matter I referred to.

Mr. WALDIE. Is it decided that the Act should come into operation on the 1st July?

Sir JOHN THOMPSON. If the Committee wishes, I have no objection that it shall be the 1st of September.

Mr. MULOCK. I think that will be better.

Sir JOHN THOMPSON. We will make it the 1st of September.

On schedule 1.

Mr. BURDETT. With reference to the fees provided for in this schedule, I may state I have had a long letter from a bank in Ontario which suggests that all dishonored notes shall be stamped, and, for a fee of 25 cents, a clerk of the bank could mail the notice at the close of banking hours. I think this would save considerable expense. I can understand the inapplicability of that principle to paper payable in another place than in the bank. There is another matter to which I wish to refer. In Ontario a note is payable at some village, perhaps ten miles from the county town, where there is a notary, and I would suggest that some slight fee for mileage should be allowed, if one has to travel that distance. The fees in Ontario at present are very moderate, and I think nobody can grumble if the present fees are not increased.

Sir JOHN THOMPSON. We will allow this schedule to stand.

Committee rose and reported progress.

4th March, 1890.

House again resolved itself into Committee on (Bill No. 6) relating to Bills of Exchange, Cheques and Promissory Notes.

(In the Committee.)

Sir JOHN THOMPSON. I ask the attention of the Committee to a subject which I called attention to when we were passing section 19. We had some discussion during last Session, and this year also, with respect to acceptances payable at particular places. The provision of the draft Bill, as introduced last year, was that an acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere. That is now the law in the Province of Ontario, and under it a very convenient practice has grown up of persons accepting their bills at particular banks, not with the intention of restricting liability upon the bill, but with the intention that the banks at which they keep their accounts ordinarily, shall pay the bill when it matures, as the banks frequently do, without cheque and without further instructions. I am informed that has been found to be a very convenient practice, and, as a matter of fact, although that was the law in the Province of Ontario only, the practice has been followed in the other provinces, and in many cases where acceptances have to be procured in country places at a considerable distance from the bank, the bank stamps upon the acceptance "Accepted, payable at the bank of so-and-so," in order that they may not, when the bill matures, have to send four or five miles to present the bill. The feeling of the Committee was very strong last year against the insertion of the Ontario law in the bill, and I accordingly dropped it from the Bill as introduced this year, but I promised that on account of the importance of the change, which I thought would be effected if we drop that section, I would bring that subject to the attention of the Committee again. I would call special attention now to the importance of the change which will thus be made. The practice, which has heretofore existed, of acceptors making their acceptances payable at a particular place, will have to be discontinued to a very great extent, unless the clause which I now propose is inserted in section 19. Hon. members will see that that must be so, because by a provision of the Bill which we have already adopted, the bank receiving the bill and presenting it is not allowed to take a limited acceptance. If it takes a limited acceptance it is responsible, and serious consequences may ensue, as regards the liability of parties on the bill. If we do not adopt the section which I am now proposing there will be limited acceptances, and no bank can here-

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after take a limited acceptance, and the practice, which I am informed is a very general one, and has grown up in consequence of the existing law, will have to be changed. Although I think I have pretty fully given the necessary information to the House, I will read a letter received by me which places the subject in a very concise form. The writer says:

"I desire to draw your attention to the great inconvenience which will result if section 19, sub-section 2, paragraph (c) of Bill No. 6, 'An Act relating to Bills of Exchange, &c.,' now before the House, is passed in its present form. The custom has long been in force here for the drawer not to designate any bank or place for payment, leaving the drawee in his acceptance to state the bank or place of business at which the bill will be payable. This is a great convenience both to the drawer and the bank which may hold the bill at maturity. The acceptor making his arrangement with his own banker to honor his acceptances, and the holder of the bill being only required to present the bill at bank designated for payment. Again, there are many millers, manufacturers and others, carrying on their business in small places where there are no banking facilities, who have their banking accounts in some neighboring city. On bills being drawn on these parties they are notified by mail to come in and accept the bills payable at their own bank, where, in due course, they are presented at maturity. Of course, it is not to be expected that any bank would undertake the presentment of bills ten or twelve miles in the country for payment. If they did, and bills paid on presentment, how could they collect expenses? If above section is passed in its present shape the above convenient usage will be done away with, as under section 44, sub-section 2, the drawer and endorser would be discharged unless they assented to the qualified acceptance, and the risk of a subsequent assent is something no holder would take. The difficulty would be entirely overcome by leaving the section as it was in the draft bill before the House last Session."

I, therefore submit the matter to the Committee for very serious consideration, and I am inclined to think that those who expressed themselves last year in favor of a change of the law and practice, prevailing all over the country, and not given due weight to the inconvenient results which would follow. The immediate result of this would be a discharge of the drawer and the endorser by the taking of what will now be a limited acceptance, but what never was a limited acceptance during the continuance of the present law in Ontario.

MR. EDGAR. I am glad to hear the Minister of Justice express the views he has done on the section now before the Committee. I am sure that the people of the Province of Ontario who are mostly interested, the bankers and the mercantile community, would be greatly prejudiced if the law were changed in the way the Bill proposes. If it is desirable that the law should be as proposed, an exception should be made in favor of the Province of Ontario. I know it is unfortunate not to have uniformity in laws of this kind, but rather than upset the whole custom of the banks and the mercantile community in the Province of Ontario, I think the balance

of convenience would be in favor of allowing the exception to remain as it has been in that Province for a number of years.

MR. BROWN. I am very glad that the hon. Minister of Justice has re-inserted this clause, and I am authorised to state, on behalf of a large number of the mercantile community in my town, that they were very much disappointed at the prospect of the Bill being passed without this provision.

MR. WELDON (St. John). I understand that the hon. Minister wants to provide that an acceptance at any particular place is a general acceptance, unless it is understood that the bill is payable there and not elsewhere. It seems to me that that is a great inconvenience. I understand that the English law, which was settled a great many years ago, is that when an acceptance is made payable at a particular place, the bill must be presented at that place. It strikes me that by this provision it must be presented either there or to the acceptor at his office, which would be a great inconvenience.

SIR JOHN THOMPSON. We have provided farther on that the bill may be presented at the place designated.

MR. MILLS (Bothwell). But the party is not obliged to present it there.

MR. WELDON (St. John). But the difficulty is this: If I presented it at the bank at which it was made payable, I should not feel safe unless I also presented it to the acceptor personally, and at his office as well as at the bank. As the matter stands now, before an action could be brought against the acceptor, the party would have to show that he presented the bill at the bank at which it was payable, and that there were no funds there.

SIR JOHN THOMPSON. If a bill is drawn, made payable at the Bank of Ottawa, there must be a presentation, either there or to the acceptor himself. If it is presented there, and if the acceptor has funds there, the bill will be paid there. If it is presented to himself, all he has to do is to give a cheque on the Bank of Ottawa, and the thing is done. We do not make a presentation necessary or unnecessary. We leave the law as it is now as to that, but we adopt the principle that, if a man accepts his bill payable at a certain bank, it is a general acceptance, precisely as if he had designated no place of acceptance. By omitting this clause we should be revolutionising the whole practice with regard to these bills in the Province of Ontario. As a matter of fact, in the Lower Provinces—I am not speaking so much of the banks in the cities—take the agencies throughout the country, one of the bank managers who was here the other day informed me that the universal practice—I am referring to the Bank of Nova Scotia—was to require the acceptors to

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accept, payable at an agency of the bank; and he was not aware that by so doing he discharged all parties to the bill.

Mr. WELDON (St. John). Before it presents the bill, the bank has no right to make it payable at its own bank or agency. It has no right to say where I shall make it payable; but, suppose it is presented to me and I make it payable at the Bank of Montreal, I have the right to do that?

Sir JOHN THOMPSON. The bank cannot take that acceptance from you. It must be accepted according to its tenor.

Mr. WELDON (St. John). Does my hon. friend say that the acceptor cannot accept, payable at a particular place?

Sir JOHN THOMPSON. We provide the contrary by this Bill.

Mr. WELDON (St. John). What section?

Mr. IVES. I should say that any change in the law which will disturb the practice in drawing drafts by city merchants on their country customers will be a very serious thing. In the Province of Quebec the practice is for the city merchant to draw upon the country merchant without indicating the place of payment. Say it is a draft by a Montreal merchant on an Eastern Townships merchant. It is sent to the city of Sherbrooke, where there is a mother bank and where there are two branch banks. The draft is, perhaps, on a merchant residing in Cookshire, twenty miles away, where there is no bank agency. A notice is sent to the merchant that the draft is in the bank at Sherbrooke for his acceptance, and with that notice is sent a power of attorney authorising some official of the bank to accept for him, and it is accepted under that power of attorney payable at the bank at Sherbrooke. The practice has worked admirably. It has enabled the Montreal merchant to make his collections with facility. It is a convenience to the country merchant and is safe to the bank; and if a change were made by which this practice could not be continued with safety, it would be a very serious matter both to the wholesale merchant and his customer.

Mr. MASSON. There seems to be some misunderstanding on the part of hon. members from other Provinces as to the existing law in Ontario on the point under discussion. I think it is clearly admitted in Ontario that if a draft, drawn without being made payable by the drawer at any particular place, is accepted by the acceptor, payable at a particular bank, in order to bind the drawer and the endorsers, that note has to be presented where the acceptor makes it payable, although he does not make use of the words "not otherwise or elsewhere." But if the acceptor is anxious to have it presented there, and to be not liable unless it is presented there, he adds the words "not otherwise or elsewhere." Then it must be presented

there, or he is not liable. It would appear that some are under the impression that when it is made payable at a certain bank, not only his endorsers are interested in its presentment there, but he, the acceptor, is. As far as the acceptor is concerned, I understand the law to be clear, that whether it is presented at the bank or not, he is liable if he accepts it payable at a certain place, but does not say "not otherwise or elsewhere," but his drawer and endorser to the bill are released absolutely unless it is presented there. The hardship which has been referred to, of a person making his bill payable at a particular place being sued upon it, I do not think is of much importance. We do not find it so in the Province of Ontario, because, if he wishes to be relieved of that, he has the power to add these words; and, at any rate, it stands to reason, that these bills passing through a bank, the bank will take care not to discharge the drawer or the endorser and will always present the bill where it is made payable by the acceptor, and there is nobody released, even if he is only an accommodation acceptor, because the bank or merchant who holds the bill presents it where it is payable. In fact, we have found it work admirably, and I am happy to hear that the practice has extended not only over Ontario, but over the Provinces where the law was different in that respect.

Mr. DAVIES (P.E.I.) No doubt the question is largely one of convenience. The objection taken here is that throughout a large portion of the Dominion the law of Ontario does not apply. It is not necessary in any of the Maritime Provinces. If I accept a bill payable at the Bank of Nova Scotia, that is where it is payable, and you have not to add the words, "otherwise and not elsewhere," and it will take years before the people of those Provinces will understand this new law. Suppose this law declares an acceptance payable at a certain place without these negative words, a general acceptance, you need not present the bill at the place where the man has made it payable before suing him. The acceptor may make it payable at the Bank of Montreal, and may provide funds to pay it there, and yet the holder need not present it there at all, but put it in a lawyer's hands and sue him at once. That seems to our untutored minds, not having the practice the hon. gentleman referred to, most dangerous. There seems to be no reason for the introduction of these negative words. The practice we have hitherto followed has been that where a man makes a bill payable at a particular place, it should mean what it says, and it should be payable there, and when you present the bill there the party should be bound to pay it. I acknowledge that the other practice seems to suit Ontario very well, because it is well understood there, but if it is made to extend to the

Maritime Provinces it will not be understood, and a great deal of irritation and discontent will ensue. Perhaps it might be as well to make the Province of Ontario an exception under the law. Let their law and practice remain as it is, and let our law and practice, which is very well understood, remain as it is, and I think everybody will be satisfied. We do not want this provision introduced; I have not met a man in the Maritime Provinces that wants this new law.

Mr. WELDON (St. John). I think, also, that a good deal of inconvenience would be caused in the Lower Provinces by this amendment. The English Act does not apply to promissory notes; it only applies to bills of exchange.

Sir JOHN THOMPSON. The present English Bills of Exchange Act does, in section 87.

Mr. WELDON (St. John). I have not got the last Act, but the original Act applied only to bills of exchange. In England there might be reason for it; but in this country we have bills of exchange and promissory notes drawn by everybody. If I draw upon a man and say that it is payable at the Bank of Montreal, for instance, and he accepts it, then it is to be presented there; but if it is to be payable generally, and he accepts payment at the Bank of Montreal, that is not specified in the bill; and if that clause is put in, it is not bound to be presented there. Suppose a manufacturer in an out-of-the-way place makes a bill payable at his counter in his factory, and he has the money there to pay it, if it is not presented there but presented at the bank, the first thing he would receive would be a lawyer's letter, although he might have the money and be ready to pay it. I venture to say that even in Ontario, outside of the bankers and mercantile men, you will find that the ordinary people, throughout the country will never put in those words which the amendment proposes. I think the general public would be satisfied if the bill is made payable where the parties are supposed to have funds.

Mr. DALY. If any exception is to be made in favor of Ontario, I should like to see Manitoba and the North-West Territories included, as we have the same practice that prevails in Ontario. I think it would be unfortunate if the amendment of the Minister of Justice is not carried. Bankers, who have met the hon. gentleman in relation to this Bill, have represented that the relation to the Bill, as it stands now, is an inconvenience to the public generally. I do not wish to say that the most intelligent people in Canada live in Manitoba or the North-West Territories; still, since the Ontario practice has extended into the western Provinces, as the hon. gentleman admits

that it has extended to some of the banks in the eastern Provinces, I think the people ought to be allowed to retain the practice.

Mr. MASSON. I fancy that the trouble the hon. member from Prince Edward Island seems to anticipate, will never be realised. We have found the present practice to work well in Ontario, namely, that if a man was sued who had money in the bank, and ready to pay his bill, his bill not being presented, it would be simply a matter of costs; and if he made the plea that he had money there waiting for the bill, and if he paid the money into court and claimed to be relieved from the costs, I think any judge would relieve him of the costs. It is a mere matter of convenience. All the man would have to do would be to have the money ready in his desk to pay the bill, and the fact that the bill was not presented there has never been found to cause any difficulty anywhere. Why should the maker of a note, or the acceptor of a bill of exchange, be released, because, through negligence or otherwise, the holder of the bill failed to present it at the place where it was payable? There is no reason why he should be relieved.

Mr. DAVIES (P.E.I.). If you put in the words "not elsewhere" he would be relieved.

Mr. MASSON. He would be relieved if he put it in that way, but he has not done so. In an ordinary mercantile transaction, why should the man primarily liable, be relieved? I can see no reason for it. The other parties are secondarily liable, if the holder does not carry out the strict technical requirements. But the maker of the note, or the acceptor of the bill, is the man who owes the debt and is primarily liable; and why should carelessness or negligence on the part of the holder release him?

Mr. DAVIES (P.E.I.). The same meaning attaches to the acceptance when it is accepted payable at a bank in the Maritime Provinces; the same legal meaning attaches to it now. But suppose you apply this law to the Maritime Provinces. For the last half century the people have been accustomed to accept a bill payable at a particular bank; now, you propose that he need not present it to that bank at all, but you can sue on it if it is not presented at the bank. If you make an acceptance payable at a particular place a general acceptance, then you cannot sue as against the endorser unless you present it to the drawer. It is to avoid the necessity of presenting it to the drawer that you make it payable at a particular place, but you satisfy the requirements of the law and put the party in a position to sue the endorser, if you present it at the place where the acceptance is made payable.

Mr. TISDALE. As I understand the law, where the bill is payable

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at a particular place without the limiting words, you can either present it there or to the maker, as you please. As to the hardship of having to make a note payable at a particular place, not otherwise or elsewhere, I think the hon. gentleman misunderstands the idea of this commercial law. The object of the commercial law, which makes promissory notes different from ordinary contracts, is to enlarge the convenience, so as to make those notes a certain kind of circulating medium. I know that, in Ontario, the limited acceptance almost takes a draft out of the category of the ordinary understanding of a promissory note. No one is bound to take such a note, and, I think, the same thing exists wherever the commercial law exists. If you give a note, and you make it payable at a particular place, and not elsewhere, no one is bound to accept it. This would, therefore, change the whole system in Ontario. I agree with the hon. member for Grey, also, that you are magnifying the difficulty in regard to a man not having the money ready. Most men are only too glad to have the money paid. This only brings up one complication, and I do not say what the remedy should be. There seems to be a difference in the law in the different Provinces; and, if the law is to be made uniform, I think the proper principle to adopt would be the greater convenience to the greater number. In Ontario, there is a general consensus of opinion that no change is desired. Many bankers have represented this to me; and every person I have heard speak of it in Ontario has had the same views. I have been asked by a number of solicitors of banks, and bankers, and business men, not to allow the present law to be interfered with in this respect.

Mr. IVES. I do not think the real difficulty has been touched in this discussion. As the Bill now stands, the acceptor cannot fix the place of payment without modifying the contract, and, if he does that, and the bank accepts it, the drawers and endorsers are discharged. Unless we avoid that difficulty, we are going to make drafts impossible in the case of people who live at a distance from a bank. Now, the acceptor cannot say that the draft shall be payable at a certain place, because that modifies the contract. If that could be done without discharging the drawers and endorsers, it would be all right, but, if the acceptor goes further and adds the words "and not otherwise," the bank may refuse the acceptance.

Mr. DAVIES (P. E. I.) Would not that be a modification as much as the other?

Mr. IVES. In that case the bank could protest for non-acceptance but what I am anxious that the Committee and the Government should see to is that the very general custom which has prevailed,

and which has been of the greatest advantage to business men, should not be disturbed, that is, the custom of allowing the acceptor to indicate where he wants to pay, and to do that without disturbing the contract or releasing the endorser or the drawer. As to the other words which have been referred to, let it be left to the bank to accept or refuse as they please, but let the general words "payable at so-and-so" be permitted to be inserted by the acceptor without modifying the contract.

Mr. DAVIES (P. E. I.) I do not think that does modify the contract.

Mr. IVES. If I understood the Minister of Justice, it does, according to this Bill.

Mr. DAVIES (P. E. I.) If the hon. gentleman draws on John Smith and John Smith accepts the draft payable at a particular place, I do not think that modifies the contract.

Mr. IVES. That is the whole question.

Mr. DAVIES (P. E. I.) No, that is not the whole question. The question we have been discussing was whether an acceptance payable at a certain place means what it says as it does in the Maritime Provinces, or whether it means, as it does in Ontario, a general acceptance, unless the acceptor writes in "not elsewhere than" the particular bank where he makes it payable. If the banks and merchants of the Maritime Provinces were educated up to this new idea, it would be easy to carry it out, but I can see that a great deal of difficulty would result there.

Mr. MASSON. The merchants and bankers of the Maritime Provinces are now educated up to that.

Mr. DAVIES (P. E. I.) I think not. I have not heard of it. There is the president of one of the leading banks of the Maritime Provinces sitting on the other side of the House; but I have not heard a word in favor of this provision from anyone with whom I have any acquaintance.

Mr. WHITE (Renfrew). As I understand, a qualified acceptance is taken at the risk of the holder of the bill. If a bill is drawn on me and I accept it, payable, say, at the Bank of Ottawa, that is a qualification of the acceptance. Then, if I accept a bill for my own convenience—and there is no question as to the convenience—making it payable at the bank where I do my business, if that relieves the drawer and endorser there should be some change so as to prevent such a result. I perfectly agree with the Minister of Justice that the practice which at present prevails, and which is a very convenient one for all business men, should be continued. As regards the argument made by the hon. member for Queen's, P. E. I.

(Mr. Davies), and the hon. member for St. John (Mr. Weldon), would not an acceptance to pay at a particular place be a qualified acceptance, and one that would prevent the bank from taking the bill as accepted? If so, what convenience will it be to the Maritime Provinces or any of the other Provinces, to let the law stand as in the original draft of the Bill, and relieve the drawer and the endorser of a bill from liability, if accepted in the qualified manner referred to in the Act?

Sir JOHN THOMPSON. I must ask my hon. friends from the Lower Provinces to reconsider the statements made by them in regard to the inconvenience that would result. The bills which are accepted, payable at a particular place, are very rare.

Mr. WELDON (St. John). No.

Sir JOHN THOMPSON. I understand they are not more than one in five hundred. The hon. member for Queen's, P. E. I. (Mr. Davies), has stated that five, ten or fifteen years will be required before the public will understand the changes made. I think the hon. gentleman exaggerates the importance of this objection. This would be the practical working of the measure: Five months will elapse before this Bill will become law. It will surely be understood by every banker in that time; and, as I have said, the bills which do not go into bankers' hands, but are made payable at a particular place, are very few indeed. The banks will decline to take an acceptance payable at a particular place, "and not elsewhere;" and the matter will easily adjust itself, because the transaction, in ninety-nine out of every hundred cases, goes through the banking institutions. I think my hon. friends from the Lower Provinces will likewise see the importance of securing uniformity in Canada in framing an Act like this, with respect to negotiable instruments which are, to a large extent, interprovincial and international in their character. But, hon. members will see this, also, that what I propose is demanded in Ontario, Manitoba and the North-West Territories; and if we say that shall be the law there, as I propose to do in this section—I will omit British Columbia for the present—it comes down to this: that we shall have one law in Great Britain, Ontario, Manitoba and the North-West Territories, and a different law in New Brunswick, Nova Scotia and Prince Edward Island, as regard bills of exchange and promissory notes. Admitting that some inconvenience will result, I think it will be very small, and that we should run that risk, in favor of having uniformity, not only in our own country, but with the mother country as well.

Mr. KENNY. I have never had the advantage of discussing this particular Bill with any person who is a professional banker. I

happen to be connected with the management of one of the banks in the Maritime Provinces, but my duties are simply advisory. The hon. member for Queen's, P. E. I. (Mr. Davies), has explained the practice which prevails in the Maritime Provinces in connection with the acceptance of drafts; and as our interprovincial trade is increasing, it is most important that we should clearly understand what we are now enacting. The custom is that a merchant in the Province of Quebec or Ontario draws upon his correspondent in the Maritime Provinces. These drafts invariably pass through the hands of the banks. It frequently happens that the party on whom the draft is drawn lives a distance of from ten to forty or fifty miles from any bank agency, and when the bank sends the draft to the party on whom it is drawn, it has been the habit—and the Minister of Justice tells us it is irregular—to mark on the face of it words to the effect that it is payable at a certain bank. The banks in the Maritime Provinces have been obliged to adopt that custom for their own protection. It would not be possible for them to send a special messenger a distance of twenty or thirty miles to collect a special acceptance. The custom which prevails is one of very great convenience to the manufacturers and merchants of the rest of Canada; and what appears to me to follow, from a remark which fell from the Minister of Justice, is that the clause now under consideration will positively legalise the custom which prevails in the Maritime Provinces—that is to say, that it will now be proper, regular and legal for the bank, when it sends a draft out for acceptance, to make it payable at a particular agency.

Mr. WELDON (St. John). No.

Mr. KENNY. There is so much difference between lawyers in this House that there can be no wonder if a layman is puzzled. The hon. Minister of Justice, however, says I am right. If we can legalise the system which has been found convenient to the banks and to their customers, and which is certainly convenient to merchants and manufacturers who are supplying their customers with merchandise, I think we should adopt it.

Mr. WELDON (St. John). The hon. gentleman has pointed to a practice which prevails in the bank in Nova Scotia, that when the bank receives a draft they stamp it payable at their agency before sending it out for acceptance. I have always entertained doubt as to the right of the bank to do so. But I entirely fail to understand how the Bill would legalise it.

Sir JOHN THOMPSON. The clause says that that shall not be a qualified acceptance, but we leave out that section and it is a qualified acceptance, because section "c" says: "An acceptance is quali-

fied when it is local ;" that is to say, an acceptance at a particular place.

Mr. DAVIES (P. E. I.) I suppose it was from imperfectness of hearing that I could not understand the argument of the hon. member for Renfrew (Mr. White). I understood him to say that he could not accept the view of the hon. member for St. John (Mr. Weldon) or myself ; and he turns to clause 19 and finds that when an acceptance is qualified it is conditional, that is to say, it makes payment by the acceptor dependent upon the condition therein stated. I think that, if the amendment of the hon. Minister of Justice should pass, an acceptance is general, unless it states that it is payable at a particular place, and not elsewhere.

Mr. WHITE (Renfrew). What I understand the Minister of Justice to propose is, that where a bill is drawn upon me or upon my firm, and no place is specified for the payment, and for my own convenience I accept it, payable, say, at the Bank of Ottawa or the Bank of Montreal, then that is a general acceptance ; but under the provisions of this section 19, if my hon. friend looks at clause "c" of subsection 2, he would find it would be a qualified acceptance, and one that would relieve the endorser and drawer from liability, if the bank accepted it with the condition that it was payable at a certain place. I understand the Minister of Justice to desire to amend this section 19, so as to make such an acceptance as I have referred to a general acceptance, and not one that will relieve the drawer and the endorser. What I wish to point out in reference to the views advanced by the member for Queen's, P. E. I. (Mr. Davies), and St. John (Mr. Weldon), was, that if the Bill stood as it is at present, then a mere acceptance payable at a particular place, would relieve the drawer and endorser, and that the banks would have to take it—if they took it at all—subject to the risk that the drawer and endorser would be relieved. The proposition of the Minister of Justice will, I am sure, confer a great boon upon the commercial community of the Province of Ontario, (whether it does so in the Eastern Provinces, I cannot say), and unless a stronger objection is offered to it, I think we should adopt it.

Mr. MILLS (Bothwell). I would like to ask the Minister of Justice whether a qualified acceptance, naming a particular place, is sufficient to discharge the drawer and endorser ? It seems to me that would be a very extraordinary proposition, because it is really not such a modification of the contract as to put these parties in any worse position than they were before. The effect of that would be to render a qualified acceptance impossible without the express authority of the parties. I do not think that ought to be the case.

Mr. WELDON (St. John). If this section is passed, I think it would be important to make the matter more clear under section 45.

Sir JOHN THOMPSON. Yes.

Mr. WHITE (Renfrew). That is, in reference to the suggestion of the member for St. John (Mr. Weldon), that the presenting of the bill at the place specified, either by the endorser or drawer, would be a proper presentation?

Sir JOHN THOMPSON. Yes.

Mr. DAVIES (P.E.I.) I understand that what before was a particular acceptance with us in the Maritime Provinces is now made a general acceptance, and if we attempt to make it a particular acceptance, we shall not be in the position we always have been in to discharge the drawer and endorser. In the Maritime Provinces when a bill has been drawn on a man, and he has accepted it payable at a particular place, that has been a special acceptance, which did not discharge the drawer and endorser under the common law.

Sir JOHN THOMPSON. I think it did.

Mr. DAVIES (P.E.I.) Well, if it did, all the practice has been wrong for many years.

Sir JOHN THOMPSON. I am inclined to think it would, under the common law; but when everybody knows that a bill is accepted with the limitation that it is payable at a particular place and nowhere else, the holder takes it at his own risk.

Mr. KIRKPATRICK. In the case of a qualified acceptance, I understand that this Act will discharge the endorser and the drawer; but it is for the bank to say whether it will allow a qualified acceptance. By the proposed amendment of the hon. Minister of Justice, we are practically making all acceptances payable generally, because it is not once in a thousand times that a man adds, "and not otherwise or elsewhere." This is practically never used, and, therefore, what we are doing is to apply to the whole Dominion the law that is in force in Ontario, of making all acceptances general, and providing that those words must be added in order to make a qualified acceptance. So that we are not practically interfering with the practice in the Maritime Provinces. The amendment will not interfere with the security or the practice of the banks in those Provinces.

Mr. WELDON (St. John). I understand that, practically, these words are not used at all, and, therefore, we are introducing new ideas, which may be very profitable to the lawyers, but not to the community at large. The hon. Minister seems to say that an acceptance at a particular place discharges the drawer and endorser. I have known all kinds of objections raised to get rid of the liability

of an endorser and drawer, but I never knew that to be raised. The difficulty that presented itself to my mind was that a general acceptance would necessitate the Bill being presented to the acceptor to make him liable. But the Minister says he will make a change to meet that difficulty.

Mr. MULOCK. In the clause which the hon. Minister proposes to add, allowing the acceptor to accept the bill at any place or at any bank, there are no limitations whatever. I ask whether it would not be possible to assign some geographical limits, otherwise a bill might be made payable 3,000 miles away.

Sir JOHN THOMPSON. If it is made payable too far away, it will amount to nothing; but we are providing for the further convenience of the holder, that he may present it where it is made payable.

Mr. JONES (Halifax). These changes may be understood by bankers and legal men, but they will hardly be familiar to a large part of the mercantile community. It seems to me regrettable that any change should be made which may place a large class of the business community at a certain disadvantage, and throw them into the hands of the legal men who look after the interests of the banks. It appears to me that any change like this should be made as plain as possible to the trading community of the country, who will be real sufferers in the event of anything being complicated in the new arrangement.

Sir JOHN THOMPSON. I think the change we are making is in the interest of that class, because we are providing that the drawer and endorser shall not be discharged by taking an acceptance payable at a particular place, unless it is declared on the face of the acceptance that it is to be payable there and not elsewhere. Therefore, we are removing a difficulty, and requiring that a limitation in a bill shall be plainly expressed on the face of the bill itself.

Mr. MULOCK. I do not think the hon. Minister has quite removed the objection I raise, as to the latitude allowed to the acceptor to name a place. It appears to me that the acceptor ought not to be at liberty to name a place of payment different from the place named in the bill itself.

Sir JOHN THOMPSON. The clause does not permit him to accept wherever he pleases. Let us see how it will work out. A bill is presented to me to-day by the Bank of Montreal in Ottawa, and I wish to accept it payable at the Bank of Montreal in Halifax. The bank simply refuses to take it if the acceptance is too far away to satisfy it. But this provision is to permit the bank to take it, if a particular place is named, without affecting the parties to the bill.

Mr. MULOCK. It appears to me that the drawer of a bill has dis-

charged his duty if he gives a general acceptance; and, if the holder accepts generally, he has done all he is bound to do at that stage, and the holder of the bill, the bank, would not be entitled to refuse this acceptance. I think the right of the drawee to name the place should be qualified to the extent that he should not have that right where the drawer has specified in the bill a place of payment.

Mr. MASSON. My hon. friend is surely mistaken as to the existing law, or as to what is proposed by this Act. I do not understand that either this Act or the present law requires that where a drawer names the place of payment in the bill, an acceptor has the right to change that to another place. The acceptor names the place, but still makes a general acceptance when there is no place named in the bill, but if there is a place named in the bill, then to make a general acceptance, he has to make the acceptance without naming any place.

Sir JOHN THOMPSON. Let us suppose that a bill is presented for acceptance payable in Ottawa, and, through perverseness or otherwise, the acceptor accepts it payable at the Bank of British Columbia in Victoria. The bank, under this clause, has the right to disregard that, and present it to the acceptor himself, or it may present it at Victoria, British Columbia. The acceptor by making a draft payable at a place different from that mentioned in the body of the draft, makes a general acceptance and the bank can present it to him, as if there was no place named.

Mr. KIRKPATRICK. I would like to ask the hon. Minister of Justice if he is going to introduce a clause, referring to bills of exchange or promissory notes, by which, on the words "given for patent rights" being written across the bill, the transferee takes it subject to all the rights that exist in favor of the original holder?

Sir JOHN THOMPSON. I submit that as this is a Bill relating simply to bills of exchange and promissory notes, it will be out of place for us to deal with the prevention of a particular class of frauds. It is unwise and unnecessary to engraft those provisions on this Bill. We leave them in force, but, if we undertook to say that a particular class of notes, which have, according to past practice, been somewhat affected by fraud, shall under penal provisions, have certain words stamped on their face, we must take the same ground in relation to all classes of frauds. We must say that, if a promissory note be given for lightning rods, that must appear on the face; if a promissory note be given for family bibles, which fall to pieces the first time a fire is lighted in a room, that must appear; if a promissory note is given for gaudy maps, which fall to pieces before they can be hung; if a promissory note be given for pitch-

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forks, hayforks, ploughs, or for miraculous seed grain, which fructifies five minutes after it is sown, that must appear on the face; and that while we are legislating in regard to notes, we must also legislate in regard to frauds in other contracts.

MR. KIRKPATRICK. I cannot agree with the Minister of Justice. This is a Bill relating to bills of exchange and promissory notes. Why should we not incorporate in that those matters which affect bills of exchange and promissory notes, particularly where the bills say that the transferee must take the bill subject to all the sets-off which exist in regard to any part of it. This is the place to make that provision. If we simply put this provision in a law relating to patent rights or in the criminal law, the persons affected will not be aware of it. This is the very place to put it in, where we deal with cases after consideration given for a bill, and where we state that the transferee of a bill is to be liable for it under all circumstances. That is the place where we ought to make the exception, if there is to be any exception. But my hon. friend the Minister of Justice proposes to change the law. He says we are not going to change it; but he is going to repeal the present law by the schedule of this Bill. If we are going to repeal the whole of that Act except sections 12, 13 and 14, why should that provision not be placed here? The objection of the Minister of Justice seems to be that this is making a certain offence penal. You might take that provision out and make it part of the criminal law, but it is very desirable to let every person know that anyone who takes a note for a patent right does so subject to all the equities which existed between the original parties. This has been found of great advantage in the country parts of Ontario in the past. It may be right to extend it, but the hon. gentleman has not given us any reason to show that it is not a proper provision in regard to patent rights, though he says that, in that case, we ought to extend it to seed grain and other matters in regard to which frauds are committed. I would be quite willing to see the provision extended even to that seed grain possessing the miraculous powers which the hon. gentleman has referred to.

MR. SPROULE. There is one very important consideration in connection with this matter which shows that it would be an advantage to have that provision here. That is, that the business men all over the country will probably have this Bill in pamphlet form, and will study it and will carry out their business according to the law as they find it here. Tens of thousands will carry out the provisions of this Act who will never see a copy of the criminal law; so that men who are taking notes, or having notes, or doing a banking business, would become better acquainted with the law under this

Bill, and I think, if this provision were inserted here, it would come to the notice of many more than if it were left in the criminal law.

Mr. MASSON. I cannot agree with the hon. member for East Grey (Mr. Sproule). I do not think this is a proper place in which to insert penal clauses, or to have legislation as to what notes should be given for. There is a provision that a person cannot give ordinary promissory notes for these articles which have been referred to. If a person is selling a patent right or anything of such a doubtful practical value, and takes a note for it, he is liable to a penalty, but he is allowed to take something which resembles a promissory note, though it must have stamped upon it something which destroys its value as a promissory note. It is no longer a promissory note in the meaning of commerce. It is, therefore, altogether different from negotiable securities. If this Bill is, as my hon. friend says, to be printed in pamphlet form, there might be an appendix giving a reference to the patent right documents, because those are not promissory notes in the sense which is understood by the commercial world. It would be a great disadvantage to this Bill to cumber it with a lot of criminal law and penal enactments. This is a Bill referring to bills and notes, and let it refer to them simply and not to other matters.

Mr. PATERSON (Brant). If the hon. member for Frontenac (Mr. Kirkpatrick) is correct in saying that this Bill repeals the present Act, we should see that it does not repeal those provisions to which he has referred.

Sir JOHN THOMPSON. I see that I was mistaken in saying it did not repeal those provisions; but I understand that my hon. friend from Hastings (Mr. Burdett) is proposing to insert some such provisions in the criminal law, and I think it would be better to put them all together.

Mr. WHITE (Renfrew). It seems clear to me that this Bill repeals the former one. I would point out to the Minister of Justice that section 123 of 49 Vic., provides that such notes as have these words written across them are to be taken subject to those words. I understand that to mean that a transferee who accepts these notes should accept them subject to all the conditions between the original parties.

Mr. KIRKPATRICK. If you incorporate these clauses in another Bill, you are in effect altering and amending this law by other measures.

Sir JOHN THOMPSON. We will allow this section to stand over for the present.

Mr. KIRKPATRICK. If a Bill is drawn upon him in the wrong name and he accepts it in that wrong name, is he liable?

Sir JOHN THOMPSON. Yes, under this Bill.

Mr. KIRKPATRICK. You only say he may accept it in this wrong name, but it does not say that he shall be liable.

Sir JOHN THOMPSON. It is a question of identity.

On section 42.

Sir JOHN THOMPSON. That section stood for the reason that the words "within the customary time" are too vague. I propose that the section shall read "when a bill is duly presented for acceptance and is not accepted on the day of presentment or the next following business day."

Mr. PATERSON (Brant). Is the effect only to give two days for the acceptance of a bill?

Sir JOHN THOMPSON. Yes.

Mr. PATERSON (Brant). Suppose the person is not at home, and there is no power of attorney to accept a bill.

Sir JOHN THOMPSON. It is not presented in that case. At present the practice is to leave the bill for acceptance and to leave it next day. The English Act says "the customary time," and we think that is too vague. There must be some limited time beyond which the bill shall not be allowed to remain without dishonor.

Mr. PATERSON (Brant). For instance, in case of a member of this House not leaving at home a power of attorney to accept a bill, and it has to be sent here for his own acceptance—how would it work then? Is a bill not to be considered as presented until it reaches a member here, or is it presented when it reaches his place of business?

Sir JOHN THOMPSON. It is not presented in that case. Section 41 regulates the subject: "presentment must be made by or on behalf of the holder to the drawee, or some person authorised to accept or to refuse acceptance on his behalf."

On section 45.

Sir JOHN THOMPSON. In sub-section 1, I propose to insert, after the word "bill," the words "or acceptance."

Mr. MONCRIEFF. In regard to section 45, I think it might be extended, so that when the place of payment is a township the bill should be presented at any post office in that township.

Mr. IVES. I should object to any such change, for in that case the bill should be presented to the man himself.

Mr. WHITE (Renfrew). The presentment at a post office would not be sufficiently definite; it should be either at the residence or place of business of the individual.

Sir JOHN THOMPSON. I will read an amendment which has been drafted, as follows:—

"Where the place of payment is not specified, as any city, town or village, and no place therein is specified, the bill is to be presented at the drawer's or acceptor's known place of business, or known ordinary residence, and if there be no such place of business or residence, the bill is to be presented at the post office or the principal post office in such city, town or village."

Mr. IVES. I think the presentation to the post office is a mere matter of form, for the purpose of holding the endorser responsible. It is no part of the duty of the postmaster to receive a deposit of money to meet a note, and, therefore, it is simply a bare form. Why not say that if a man has no residence and no place of business, that shall be in itself sufficient? You are not going to arrive at anything more by the compliance with the mere form of presenting the note at the post office.

Mr. DALY. I desire to call the attention of the Committee to section 87, which seems to me to revolutionise the whole law in connection with the presentation of promissory notes. The section now reads as follows:—

"1. Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable; in any other case, presentment for payment is not necessary in order to render the maker liable."

That at present is not the law in the Province of Manitoba, nor in Ontario, though it may be in England as I understand. Particularly in our part of the country, the whole custom of carrying on business by accepting notes would be revolutionised by this section. I will give you an instance of what might occur. The Bank of Ontario at one time had a number of agencies in the Province of Manitoba, and some years ago they withdrew them. One of these agencies was at Portage la Prairie, and a number of machine notes were made payable there, and subsequent to the dates of these notes becoming due the bank had withdrawn its agency. The consequence was that in order to hold the makers of these notes responsible we had to present them before we sued, and there was no bank to present them at. If section 87 remains as it is, the maker could not be held responsible at all in such a case. It does not seem to me at all necessary that a note should be presented at a particular place, if it is made payable at that place, in order to hold the maker liable. It is a fact that, in order to recover from the maker of a note, you must present it before action at the particular place where it is made payable, or to the maker himself.

Mr. TISDALE. It would be a most extraordinary doctrine—and I do not think it can be the intention—to say that if I owe a man money, and give him a note payable at a particular place, I should

be free from the debt, if I do not present it at that place on the date mentioned.

Mr. MULOCK. The Bill does not say anything about a particular date.

Mr. TISDALE. We are surely not going to relieve a man from a debt he owes on a technicality like that.

Mr. WELDON (St. John). I do not think the section is at all as clear as it should be, and I think that some words should be inserted, so as to make the intention clear.

Mr. DAVIES (P. E. I.) The stipulation is simply in accordance with the law?

Sir JOHN THOMPSON. Yes.

On section 26.

Mr. WELDON (St. John). In the case of persons acting in a representative capacity—for instance, as executors, who have to endorse notes—it ought to be made clear that they are only liable in their representative capacity, and no further.

Sir JOHN THOMPSON. The question is whether we should not adopt the existing law, or whether we should change the law, not only with regard to bills of exchange and promissory notes, but with regard to contracts generally. I think it is simpler to leave the law with regard to these contracts as it is with regard to other contracts.

Mr. WELDON (St. John). The difficulty is that persons who sign notes as executors or agents do not suppose themselves to be personally liable, but find out afterwards that they are.

Sir JOHN THOMPSON. Executors who endorse notes are personally liable under the law, and I do not see what form of endorsement would relieve them.

Mr. WHITE (Renfrew). It seems to me, in reading this clause, that there is no more effective way of describing a man's character as an agent or representative than by using the very words which are mentioned here as not exempting him from personal liability.

Mr. DAVIES (P. E. I.) The general doctrine is, I take it, that if a man merely puts an addition to his name as an agent or representative, that is merely a description of the man, and does not relieve him of personal liability; and he can only be relieved by using terms which show clearly that he is not signing as John Smith merely, but as the agent of somebody else. But an executor stands in a unique position: if he signs a note, he signs it in a capacity in which he must be personally liable; and I do not think you could use a form of words which would exempt him.

Sir JOHN THOMPSON. If we had to make the law of contracts from the beginning, we might regard the philosophy of the view expressed by the hon. member for North Renfrew (Mr. White). But people often make additions to their names as mere descriptions, and I think there would be great difficulty in changing the law with regard to contracts, especially with regard to bills of exchange, which are contracts of an international character. It would not do to have the law on this subject here which would be different from that in England, without risk of very great inconvenience.

Committee rose and reported progress, and it being six o'clock the Speaker left the Chair.

6th March, 1890.

House again resolved itself into Committee on Bill (No. 6) respecting Bills of Exchange, Cheques and Promissory Notes.

(In the Committee.)

Sir JOHN THOMPSON. The hon. member for St. John (Mr. Weldon) the last time the House was in Committee, proposed to change the definition of the word "bank" in sub-section "c" of the first section. With all deference to the hon. member, I would prefer to adhere to the words in the Bill. The definition which the hon. gentleman proposed was that the word "bank" should apply to any bank to which the Banking Act had application. The objection made then was that saving banks do no business in bills and notes, but that is a mistake. There are saving banks coming under the Saving Bank Act which do business in promissory notes and bills of exchange, and desire to have the provisions of this Bill extended to them. Besides that, I think it would be inconvenient to have the definition of terms in this Act referring us back to another Act, and, indeed when we come to that Act we find that the definition there is a very vague one, and may be changed from time to time without any particular reference to this Act. It seems to me that the definition here is a proper one, and we had better adhere to it.

Mr. WELDON (St. John). Do I understand the Minister to say that savings banks do business in promissory notes?

Sir JOHN THOMPSON. The Montreal City and District Savings Bank do such business.

Mr. WELDON (St. John). I doubt very much whether a savings bank has a right to accept discount.

Mr. BLAKE. I know the general custom in that large corporation is not such as the Minister has stated. It may be that they make such loans, but their general custom is to make what are called special agreements, not bills or notes at all, and the real credit is, of course, the credit of the stock or security. I doubt their doing any bill discounting business.

Mr. SPEAKER. Being one of the directors of the Montreal City and District Savings Bank, I may say, that as a rule they always lend on a loan note which embodies certain conditions as to the disposition of the collateral security which is deposited with the loan notes; but it does sometimes happen that the particular note may be an ordinary draft or an ordinary note, accompanied with that collateral security in the shape of a bond or a stock of some corporation. But I have known that notes have been deposited with it, on some very important occasions, when banks, for instance, have had to come to us and deposit, as collateral security, an additional security, I may add, and deposit their notes with us. We have to collect them, and, of course, the bank ought to come under this Bill in order to be able to carry on that business, which is, I may say, an exceptional one with the bank, but such business sometimes comes to the bank.

Mr. BURDETT. Will the hon. Minister insert a clause about seed oats, or would he prefer to have it in the other Bill?

Sir JOHN THOMPSON. I thought the hon. member for Frontenac (Mr. Kirkpatrick), when I gave way on this point, would guarantee me against such applications. I am foregoing my own opinion as to the propriety of inserting the clause suggested by the hon. member for Frontenac in this Bill.

Mr. BURDETT. I beg to call the Minister's attention to the fact that, in Ontario, some of the insurance companies have the right by law to sue for notes at the company's chief place of business. This might possibly work a hardship on the makers of the notes, but it is very convenient for the companies. If it is intended that those companies should retain that privilege, I would ask that notes given for subscriptions to churches and colleges should be put in the same category. In the city of Belleville, where a college endowment fund was raised, many notes were given as subscriptions, varying from \$10 to \$100, the limit of the jurisdiction of the division court, and payable in from one to five or six years. They were dated at the different places of residence of the makers. Before the notes came due, the makers of them changed their views about paying the subscriptions, and there are now in the hands of a Committee of the Board of Managers notes of this kind to the extent of from \$10,000

to \$15,000; and if they are obliged to sue for them at the various places of residence of the makers, they are practically of no value whatever. I think that notes given as subscriptions to colleges and churches might be sued for at the place where the church or college is situated, as in the case of notes given to insurance companies.

Sir JOHN THOMPSON. I understand the difficulty to arise in this way. By a statute of Ontario, certain notes to companies may be recovered at the principal place of business of the company, while a suit for the recovery of other notes must be brought in the county where the maker resides. It seems to me that we may safely leave that subject to be regulated, as now, by legislation with reference to procedure. If we undertook to deal with it, we might have to interfere with the legislation in regard to procedure in all the different Provinces. Or we may leave it to the persons who sign the notes, or the persons who receive them, to say where they shall be paid.

Mr. BURDETT. That is not the law of Ontario under the Division Court Act. It is possible the question of jurisdiction might arise; but I would ask the hon. Minister to consider the matter, on further considering the Bill.

Mr. KIRKPATRICK. I think that is a matter for the Local Legislature to decide, according to the jurisdiction it shall give to the courts. I do not think it would do for us to introduce any such measure into this Bill.

On section 51, sub-section 3.

Sir JOHN THOMPSON. I propose to amend the sub-section, so that it will read as follows:—

A bill which has been protested for non-acceptance, or a bill of which protest for non-acceptance has been waived, may be subsequently protested for non-payment.

On section 51, sub-section 10.

Sir JOHN THOMPSON. I propose to strike out that sub-section, for the reason that a like provision is made in a more complete form in section 94, sub-section 5.

On section 60.

Sir JOHN THOMPSON. This is the section about which the discussion took place, the other evening, touching the question of forgery of endorsements. I do not want to prolong the discussion or to press any further the views I then expressed. I said then, all I could say now on the subject, and unless the Committee have come to a different conclusion from that expressed by the majority the other day, I will drop the section.

Mr. COCKBURN. We ought to have a little interest in the banks as well as regard for our own convenience. No doubt it is very convenient for us to make the banks with which we are depositors, responsible for the endorsements of our cheques, but I do not understand that such is the contract we make with a bank, when we open an account with it. The banks, when we open an account and make a deposit, take the security of having the depositor sign his name in a book, so that when cheques are presented bearing his signature, in cases of doubt, a comparison may be made with the signature in the book, and the bank has to that extent guaranteed the authenticity of the cheque which it pays. But it is a very different matter, when you are asking a banker to guarantee the authenticity or genuineness of any number of endorsements on a cheque. We are trying to impose upon the banks, for our own convenience, a burden which ought not to fall on them. This may be an inconvenience to the poor man, though a great convenience to the rich man. A man comes down from lumbering up the Ottawa, with a cheque payable to his order for fifty or sixty dollars, and he presents it at the bank but cannot get paid, because he has no means of giving the bank assurance that he is really the person to whom the cheque is payable. I have known cases where the men had to return to their homes without the money. I hold, we have no moral right to throw upon the banks a responsibility of that kind, when they are not in a position to acquit themselves of it. It is, therefore, to encourage our own laziness, that we have determined that the banks shall keep our accounts, and it is insisted upon, that they shall be responsible for every endorser whose signature may have been put upon the cheque which passes through their hands. I think the Minister should press this provision of the Bill, as the banks have their rights as well as other people.

Mr. DAVIES (P.E.I.) When I first saw this clause I thought it was injudicious to insert it in the Bill, but I have changed my opinion. It is not a question of identification, because, supposing any person through whose hands the cheque has passed has had his name forged, the bank has to guarantee the genuineness of every endorser.

Mr. KIRKPATRICK. No; they have only to know the man to whom they pay the money.

Mr. DAVIES (P.E.I.) If the cheque is made payable to John Smith, and John Smith's name is forged, and the cheque goes through several hands, the bank would be liable. If John Smith had not endorsed it himself, the bank would be liable to pay the amount again, because they had previously paid what they had no

authority to pay. Several gentlemen have stated that this provision would be very inconvenient, but it has existed in the English law for over thirty-seven years, and, I understand, it has worked well. As the hon. member for Centre Toronto (Mr. Cockburn) says, we throw an undue responsibility on the banks. They are bound, of course, to know the signature of the drawer. If they pay a cheque with a forged signature to it, the signature of a man who deals with them, they take the responsibility and have to pay it a second time; but, when they identify the signature of the drawer as being genuine, what means have they of identifying the signatures of several endorser through whose hands the cheque may have passed? Business men make cheques payable to order for their own convenience, but that seems to throw an undue responsibility upon the banks.

MR. KIRKPATRICK. I understand that the bank looks to the last man to whom the money is paid. The bank takes care that the man to whom the money is paid is known, and his signature relieves it from liability. If he has brought a cheque to the bank with a forged name upon it, he will be held responsible.

MR. COCKBURN. Suppose he is not worth anything.

MR. KIRKPATRICK. They will not pay to a worthless man.

MR. CHARLTON, I think that, in relieving the bank of the responsibility of scrutinising the name of the drawer—

MR. DAVIES (P.E.I.) Not the drawer.

MR. CHARLTON—or of anyone whose name is on the note, we will be taking a course which, perhaps, may be in the interest of the bank, but is not in the interest of the public. It is the business of the bank to satisfy itself as to the genuineness of the signor and endorser. It is always easier for the endorser to get himself identified, and if the bank is allowed to pay on any piece of paper, and to get exonerated from carelessness on its part, there is a wrong done to the business people of this country. That is the law in all the American States. The bank satisfies itself of the genuineness of the signatures before it pays, and that is no hardship. If we exonerated the bank from this responsibility, we might be doing something in the interest of the bank, but not in the interest of the people of the country.

SIR RICHARD CARTWRIGHT. We have had this matter under discussion on three occasions, but no attempt has been made by anyone speaking with authority, to show that any inconvenience results from the present system.

MR. COCKBURN. Yes.

SIR RICHARD CARTWRIGHT. I think, in that case, the experience

of the hon. gentlemen is gravely at variance with that of a large number of business men. I think a far greater inconvenience than any which now prevails will be inflicted by our altering the common law in favor of the banks. The banks are asking that they shall be exempted by statute from the liability which the common law places upon them. If the bank chooses, it can refuse to pay cheques payable to order; and, if it did, I have no doubt that twenty other banks would be found to rise up the next morning willing to pay those cheques.

Mr. COCKBURN. They cannot refuse to pay a cheque made payable to order.

Sir RICHARD CARTWRIGHT. My hon. friend near me (Mr. Weldon, St. John) says they would refuse to pay cheques payable to order. If you pass this clause, for which no reason has been given, except that there is an English precedent for it, they would do so. The conditions here are entirely different from those in England, and I am not prepared to accept such a change in Canadian law because it has been found expedient in England to adopt this particular clause. With the exception of the hon. member for Centre Toronto (Mr. Cockburn), I have not heard any business man state that any serious inconvenience has arisen from the present practice. As the hon. member for West Durham (Mr. Blake) intimated, in discussing this question some nights ago, if the banks ask to be relieved from any inconvenience caused, according to my hon. friend from Prince Edward Island (Mr. Davies), by a number of subsequent endorsements, there might be something in favor of the provision; but, if the cheque is made payable to a particular man, it is difficult to see why the bank should be discharged from its liability to see that the money is paid to that particular man. If it is argued on high moral ground, I think the convenience of the public is as much to be considered as the convenience of the banks. This will also introduce a great deal of confusion and uncertainty in the country, and a material check will be removed from forgeries, because, I think, you are more likely to have forgeries committed under this provision than if you were to leave the law as it is at present.

Mr. WELDON (St. John). The hon. gentleman puts forward the current idea that a bank can refuse to a cash cheque until the party is identified. It cannot do it. As a matter of convenience, a man will take the trouble to be identified, but he is not bound to do it, and it is a mistake to imagine that a bank can refuse a cheque unless the man is identified. Thus the banks have to take the responsibility of an act to which they have not conduced. The bank has either to do this or refuse payment of the cheque, and the

rumor is spread abroad that the party's cheque has been refused, and then the bank has an action against it, in which the party may recover heavy damages. I say that : possible, and those difficulties have occurred. Banks have got to run that risk and say to a party : You have got to be identified. The bank is bound to know the signature of its customers ; but that they should be bound to know the signature of every other individual outside of them, is putting on them a burden that ought not to be. The custom of drawing cheques payable to order is one that has grown up within the last thirty or forty years in England. On account of the Stamp Act they could not draw them until the Act of 1853 ; in consequence of the operation of that Act they allowed cheques payable to order, and then this section was inserted, which has been the law of England from that day to this, and it has worked well. The banks are not responsible for a cheque being made payable to a party ; the party does it for his own convenience, to get a voucher for payment. If he sends it out, it may occur through his own carelessness, or through the carelessness of the payee, that an opportunity is given for forgery, yet the bank, who are perfectly innocent of the transaction, have got to bear the blame. The member for West Durham admitted, the other day, that where a cheque was given to the party himself and he lost it, or it was forged, the payee would have to bear the liability. He suggested the case of it being sent by letter and never received. Any man who sends a cheque through the post office without paying the fee or registration by which the cheque could be traced, is just as careless as if he had dropped it out of his pocket.

Mr. BLAKE. Isolated instances, no doubt, will be found which prove that there may be difficulties both ways ; but I maintain, as I said the other evening, that with the vast amount of transactions that are constantly going on in this country in cheques payable to order, remembering the thousands upon thousands of cases occurring every week of the year, it is utterly beyond probability that any very serious difficulty can have been created for the banks. As I said to the Minister, on a former occasion, we want to know if experience has proved that the banks are placed in a position which is intolerable. He has given no statistics, no information. My hon. friend from Hochelaga (Mr. Desjardins) himself the president of a bank, has stated that he was not aware of any grievance. My hon. friend beside me (Mr. F. Langlier) who is largely concerned in commercial affairs in the Province of Quebec, in his capacity of a public man and professional man, says he has not heard of any case of inconvenience. I do not mean to say there may not be an

isolated case in those thousands upon thousands of transactions, in which some inconvenience; some loss, may not have occurred to a bank. But I say that, so far as we are made aware, these are infinitesimal, while the public convenience is enormous under the present system. I say that it is not a question between sound theory and practice, but it is a question in which the practice of thirty or forty years has demonstrated that the theoretical objection is unavailing. The practice has been found to be good for the community, and it should be continued unless it has been found to be seriously injurious to the banks as a whole. I have no doubt whatever that if it were rendered possible for any one bank to avail itself of the proposition, that it should attach the same measure of security which now subsists in the case of a cheque payable to order, that bank would get a great deal of business from its competitors. My hon. friend from St. John says that in England, up to a comparatively recent period, the Stamp Act prevented cheques being made otherwise than payable to the bearer, and almost contemporaneously with the change which rendered it possible for a cheque to be made payable to order, this protection was introduced by the influence of the banks. They never had an opportunity of testing how it would work there. They decided at once that when the system of cheques payable to order was introduced, it should be introduced coupled with this limitation. We have had a system of cheques payable to order without this limitation, it has worked well, and I see no reason at all why we should embark in this enterprise and change it.

Mr. DESJARDINS. As I said the other day, I do not know of any bank—although the bankers have met several times lately—that has asked for the change contemplated in this section. A bank, of course, on receiving a cheque signed by one of its customers, sees that the signature is protected, and the process of identification has never been challenged by any honorable man. When a stranger comes to a bank, he generally brings with him a man who is known to some of the officers of the bank, and when he presents his bill, if he is not known, the clerk asks him to be identified, and he immediately submits to it, because he knows that he must be identified. It is not only his signature which must be known, but he must be identified himself. That has been the custom for many years, and I do not know of one instance where any difficulty has arisen, or where an action for damages has been entered, as spoken of by the hon. member for St. John (Mr. Weldon). When a man is refused by a clerk because he is not known, it is easy for him to find some one whom the clerk does know; but a customer who gives a cheque

generally takes such precautions as that the bank, to which it is addressed, may be able to pay the proper party. That custom has worked satisfactorily; it has been found convenient to the customers of the bank, and to change that practice now would harm the banks more than it would benefit them. I know many instances where banks have received deposits from people who preferred to pay by cheques just because they found there was a security in paying that way; and the bankers are willing to accept the risk, because there is a benefit attached to it. I do not know any reason why we should change the present system.

Mr. PATTERSON (Brant). I will venture to make a remark because the Minister of Justice, with great good temper, has expressed himself as willing to accept the views of the Committee in reference to this matter, while holding his own opinions. The member for Prince Edward Island has been a convert to the views of the Minister of Justice, through his persuasive eloquence, and I feared that the Minister might think, perhaps, that all those who had taken a different view might have been equally influenced. For my own part, my views remain as they were. The member for St. John (Mr. Weldon) was not a convert; he was wrong from the beginning. With reference to the inconvenience to a bank, although I am not a lawyer and am not fully posted on matters of this kind, I think inconveniences are arising continually. My understanding of the law is that I might buy from a person in good faith anything—a horse, for instance—on which there was a chattel mortgage in a distant country; I buy it in good faith, and I pay him the money. The man to whom I pay the money I may never see again. I think that horse could be taken away from me. But take another case, although it might not run on all fours with the horse—the horse, of course, would run on all fours. But take this case that will be more parallel on the line we are speaking of, in which there is fraud. Supposing a horse has been stolen from a distant country, and I buy it in good faith. It turns out, however, that it has been stolen, and the horse is then taken from me. This is inconvenient, but it is recognized as being just and proper. The present system as regards to frauds has not worked any material hardship on the banks. The argument of a bank president (Mr. Desjardins), and the statement made by the hon. member for West Durham (Mr. Blake), go to show that by adopting the system suggested the customers of the banks would be largely increased. The feeling of the Committee remains as it was manifested the other day, and I am glad the Minister of Justice is prepared to yield his views in order to meet the wishes of the majority of the Committee.

Sir JOHN THOMPSON. I am glad to find that two days' reflection has increased our numbers and strength very materially; but still I perceive that the views of the Committee have not been changed.

Mr. LOVITT. I take exception to the remarks of the hon. member for Hochelaga (Mr. Desjardins). I had occasion to have a draft for \$500 odd cashed in Quebec, and immediately I entered the bank I was practically asked if I was a forger. I hold that the customer should be protected. I did not get anyone to identify me on that occasion, but I was obliged to occupy two hours before I was paid the money.

On section 87.

Mr. MONCRIEFF. I see no necessity of making a distinction between notes and bills of exchange. By turning to section 52 of the Bill it will be seen that when a bill is accepted generally, presentation for payment is not necessary in order to render the acceptor liable. If I draw a bill on a person, and he accepts it, payable at the Bank of Ottawa, in Ottawa, this section would apply to that particular bill, and it would not be necessary, in order to render the acceptor liable, that it should be presented. The Committee are now, however, asked to make a distinction between bills of exchange and promissory notes, and to say that a bill of exchange accepted generally need not be presented in order to hold the acceptor liable, while a promissory note must be presented to render the maker liable. I fail to see the necessity of any distinction. The present Act does not make any distinction between the effect of a bill or a promissory note, unless the words "not otherwise" or "not elsewhere" are incorporated. By this Bill, however, it is proposed to make, all over this country, a distinction between a bill of exchange and promissory note, and persons will have to learn that as regards a bill it need not be presented, so far as the liability of the acceptor is concerned, but that a promissory note must be presented in order to render the acceptor liable. I suggest, that in order to make the present clause conformable to the present law with regard to bills to insert the words "not otherwise or elsewhere," and in this way we may be able to secure uniformity throughout the Dominion. The words I have suggested will make it uniform with the provisions further back in the bill, in reference to bills of exchange.

Sir JOHN THOMPSON. As to this, I think there are very material distinctions between a bill of exchange and a promissory note. Some of my hon. friends across the House suggested that it was unreasonable and unphilosophical that an acceptance payable at the Bank of Montreal should be regarded as an acceptance payable anywhere else.

That argument was not so strong as regards bills of exchange, and in that respect there was more show of reason in favor of making the words very precise in the affirmative and in the negative form, before the contract should be held to be restricted. In this case we have the words embodied in the contract, and if a man makes a contract that he will pay at the Bank of Montreal, in Ottawa, I do not see why that should not be regarded as a limited contract. There is the further reason that in dealing with promissory notes, in which this is embodied in the note itself, we are not running the risk which we were as to the bills of exchange, of having the drawer and previous endorser released by the bank taking a qualified acceptance. Here it is the essence of the contract, whereas, with bills of exchange, the danger was that the banks or the holders, or the persons presenting such acceptances, by making the acceptance payable at a particular bank, would be releasing the previous parties to the transactions, and doing so unintentionally. That does not apply to a promissory note. Furthermore, I think that the weight of authority which I pressed on the House as regards the other case, is against this change. I urged on the House that the practice in Ontario, and the practice in England, was in favor of the change I desired. In this case, the practice in England, and in the Provinces, except Ontario, is the same as now stipulated by the Bill, and in changing it we would be making a change all over to suit the law of one Province.

Mr. WHITE (Renfrew). Do I understand that it is proposed to leave section 87 stand as it is?

Sir JOHN THOMPSON. Yes.

Mr. WHITE (Renfrew). This clause provides that a promissory note if made payable at a particular place, must be presented for payment at that place, in order to make the holder liable.

Sir JOHN THOMPSON. Only before action.

Mr. WHITE (Renfrew). Oh, that is different.

Mr. MONCRIEFF. I always like to yield gracefully to what the Minister of Justice has made up his mind upon, even though it be not agreeable to my views. I venture to say that in the rural districts there are ten promissory notes to one bill of exchange, and if it becomes an absolute necessity that every promissory note must be presented before action, we are going to have a protest attached to every promissory note, no matter how small the amount may be.

Mr. DAVIES (P.E.I.). That is where it is made only payable at a particular place.

Mr. MONCRIEFF. I understand that fully. Of course, so far as the endorser is concerned, if there is one on the note, it must be

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presented, or free goes the endorser. Suppose I promise to pay so-and-so a hundred dollars at my residence, or at such a bank, at a certain date; by this section, I cannot be sued until the note is presented, and proof of presentment must be made. In twenty or twenty-five years' experience as a lawyer, I have never yet experienced any difficulty arising on the question whether a note was presented or not. If the present Bill passes, proof of this presentment must be made at a particular place, and that would entail a great deal more protests. As a lawyer, perhaps I should have no objection of that, but, as a matter of convenience to the community, I think I should. I question if the benefit to be derived from attaching a protest on every small note is going to be a convenience to the public generally.

MR. MILLS (Bothwell). It is the same as a note on demand in that particular.

MR. DAVIES (P.E.I.). The hon. gentleman sees that, if the maker of a note does not want to make it payable at a particular place, he can make it general, and it can be presented anywhere; but if he limits his contract and says: "I promise to pay you one hundred dollars at the Bank of Montreal," is it not reasonable that he should comply with the conditions of his promise, and that it should be presented where he promises to pay? Surely that is the practice known all over the world.

MR. MULOCK. Theoretically, my hon. friend is right, but he assumes that laymen know the law as well as lawyers. I know that, in theory, everyone is supposed to know the law; but, in practice, few people are familiar with the intricacies of the commercial law. I sympathise with the sentiments of my hon. friend (Mr. Moncrieff). If a protest is necessary, it shall be necessary to have witnesses to prove the presentation and dishonor, at the trial of the cause. This means extra expenses in these small suits, and costs heaped upon poor suitors, or a non-suit may result. The plaintiff may fail to obtain justice by reason of not having complied with this technicality. In other cases, costs may be thrown upon the defendant for necessary witnesses brought to court to give evidence, as required by this section. I know that in country places, a note made payable at a certain place, is often disregarded by those who are not commercial men. As to the technicality, I think, as a matter of convenience, this ought to be considered in the same way as the question of payment on the endorsement of cheques. So far as I know, no evil has arisen under the law in Ontario, as it now is; and, if the experience of the practices of the commercial community guided us in striking out clause 60, the same experience should guide us in striking out the provisions of the Bill as they now exist.

Mr. MILLS (Bothwell). I do not agree with my hon. friend from East Lambton and my hon. friend who has just spoken. I think, when a person makes a note payable at a particular place, it is only right and proper that it should be presented for payment at the place named in the note; that is one of the conditions of the contract. Certainly, it is much more satisfactory that it should be presented and sued upon after the presentation than that it should be sued without presentation at all, which might be done in the case of a note payable generally without a place being specified.

Mr. MASSON. I quite approve of the law as it stands at present, and I cannot see why the proposed change should be made especially after the discussion we had on the subject of bills of exchange. There is a distinction as the hon. Minister of Justice has pointed out, between the two, as regards their custody up to the time of their acceptance. From the time of their acceptance up to the time of their payment, there is practically no difference between a note and a bill of exchange: the acceptor and the maker of a note are practically identical. We have not found any inconvenience in Ontario from the present practice, and I cannot see how it is possible that any inconvenience could arise. On the other hand as was pointed out by the hon. member for Lambton, if a note is presented before action is taken, then it is material that presentation should be proved, either by a witness called and sworn, or by some other legal evidence. All notes would have to be protested, which would mean a charge of \$1 or \$1.50 on each note, no matter how small it might be. That would be a great inconvenience to the makers of small notes. For instance, farmers who buy implements from agents give notes, which are invariably made payable at a particular place, and it would be necessary to prove the presentation of those notes before they could be sued upon. That would be a great inconvenience. Besides, the person who makes the note is generally the debtor. Why should there be any reason given for his not paying the note, if he can raise the point, that he had money at a particular place at the time the note was due? He is not subjected to any costs by the non-presentation of the note. In my practice, extending over twenty years, I have not heard of a case of such inconvenience occurring, in which the defendant came into court, and said: I should not pay this note, because I had money where it was to be paid. It seems to me, that to make the distinction proposed, would be a confusion to the ordinary mind—to say that a bill of exchange need not be presented, but a promissory note must be.

Mr. WHITE (Renfrew). To my mind, there are two phases of this question. In the first place, there is, no doubt, a great deal of force

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in what has been urged against the clause, if it involves proving the presentation of the note. For instance, in the case of merchants who take notes from their customers, varying in sums from \$10 upwards, would it be necessary, for the purpose of making the makers of those notes liable, to have them formally presented to some person in his office, and to have the proof of that presentment before going into court to collect the note? If that is the effect of this clause, it should not be here at all. The other view of the case is this: numbers of notes are given by farmers for agricultural implements and other purchases. In many cases, if there is not some provision that these notes must be presented at the place where they are made payable, either the residence of the maker or some other place where the note is made payable for his own convenience, they might be sued for the note somewhere in the country, perhaps hundreds of miles from where the note was made. I think we ought to consider very carefully the question as to what constitutes presentment. If to render a maker liable, a formal presentment must be made, and evidence of that must be given in some way in court, then I think we should modify this clause. If that is not the case, and the note on falling due does not require any formal presentment, then perhaps the clause might stand.

MR. SPROULE. I think the number of people who make notes compared with the number who use bills of exchange is as a hundred to one; and they belong to a class who do not understand commercial law. They believe that when a note is made payable at a particular place it must be paid there, and it is a convenience for them to have the note left there. But if the law remains as at present, they may, unfortunately, find that they are sued for that note a long distance from home, and they are subjected to loss, while they have provided for the payment of the note by some commercial agent in the locality, or in some other way. Therefore, I think this proposed amendment to the law is a very good one. It is a convenience to people to have their notes payable at a certain place. It is much more convenient to the maker of a note to have it presented at the place where he has made provision for it beforehand, or where he intends to provide for it, than to have it presented somewhere else, and let him be sued and put to the trouble of defending himself before the courts. If a protest becomes necessary, under this amendment to the law, it is unfortunate, as that would incur expense, and that we want to avoid. One hon. gentleman said that the party who defended his note would be apt to plead non-presentment. I apprehend he would not be disposed to set up that plea in a court of law, because he would know that it

would subject him to the costs. If some other way could be found to get over it without imposing the cost of protest of every note it is most desirable that it be done. In any case the number of notes sued would be fewer in number, if it was understood that they were to be presented when made payable and payment demanded, than if they could be sued any where in the country, although the party owing the note did not know where to provide for payment.

Mr. BURDETT. The hon. Minister of Justice is entirely right, and the clause should remain as it is. I understand it makes the practice uniform all over the Dominion, which has not hitherto been the case. Cases have occurred within my knowledge in which men have given promissory notes throughout the country, payable at their own homes or at some convenient place, and yet, although they have provided the money to meet the notes where they were made payable, they were sued elsewhere and had to pay costs. It not infrequently happens that men will deposit the money with the officer of the division court and tell him to hold the money and pay it when a man presents the note, and not to sue. Cases have actually occurred, and will probably occur again, in which the maker of many notes may have some enemy or some person evilly disposed towards him, who bought his note, and, without any presentment, sued him, the purpose being to put him to his defence and make him pay costs. That would be avoided by compelling the party who holds the note to present it according to his agreement at the place where it was agreed to be paid, before taking action. I cannot see any inconvenience in this. I cannot see how any man who signs a note can be misled, and I have known of a number of cases where a great inconvenience and costs had to be suffered by the maker of the note, who was entirely ignorant of the law.

Mr. MASSON. If it is the wish of the Committee that this principle which is embodied in this clause should be carried out, there should, for the purpose of avoiding the expenses of protest, be some provision making a presentment presumable unless non-presentment is especially pleaded, because, if, under our division Court Act, a general dispute will raise that question, then the plaintiff has to prepare his proof. He may not have taken the precaution of protesting, which a prudent man naturally would, and immediately before action he will have to make the presentment and bring his witnesses to the court to prove it, thereby incurring considerable expense. That is an evil which should be remedied by providing that presentment as against the maker of the note be presumed, unless the contrary is especially pleaded.

Mr. WELDON (St. John). No doubt the plaintiff may be put to a

little expense, but very little, and that would be a small inconvenience compared with the great inconvenience which at present exists, when a party may have a note payable at his office and have the money there to pay it, and yet, not knowing who holds the note or where it is held, the first thing he gets is a writ.

Mr. MULOCK. He would not have to pay the expenses in Ontario, for by the law there the judge can make the other party pay the costs.

Mr. WELDON (St. John). But in the other Provinces he could.

Mr. MULOCK. You are behind the age.

Mr. WELDON (St. John). I do not know that we are, but we do not think that perfection exists in Ontario.

Mr. BURDETT. The wise men came from the east.

Mr. PATERSON (Brant). That is a proof they are in the west.

Mr. WELDON (St. John). I am opposed to the principle, as far as bills of exchange are concerned, but there are more reasons against it as far as promissory notes. When a party undertakes to pay a note at a particular place, it seems to me that that is a condition attaching to the contract which would oblige the holder to apply for payment there before taking action. The hon. member for Renfrew wished to know if, in the case of a country merchant who had a number of his customers' notes payable at his office, the fact of its being payable there would be a sufficient presentment. If the notes are there on the day they are due, or for a day before the action was brought, there is no formal presentment necessary, and that would be a sufficient presentment. There would be no inconvenience. Greater inconvenience would exist by making this change. The only Province that system exists in is Ontario, and you would revolutionise the whole mode of proceedings in the other Provinces. With regard to notes given to agricultural implement manufacturers, they would take care to have the words "not otherwise, nor elsewhere" inserted.

On section 94.

Sir JOHN THOMPSON. Instead of sub-section 3, I propose to insert these words:

"Notaries may charge the holder of a bill or note the fees recoverable by them before the passage of this Act."

Mr. WHITE (Renfrew). I am afraid you are destroying the uniformity of the Act. It is provided in a former clause that justices of the peace may protest as well as notaries. In that case, will these other parties who perform the duties of notaries be deprived of the fees?

Sir JOHN THOMPSON. I did not intend to provide any fees for justices of the peace.

Mr. MULOCK. I think justices of the peace should be paid the same as notaries.

Mr. DESJARDINS. Could you compel them to protest if they were unwilling to do it?

Mr. KIRKPATRICK. A justice of the peace will not be liable for any negligence, and, therefore, he should not be paid any fees. He would do this merely as a matter of favor.

Sir JOHN THOMPSON. I do not think it is necessary to provide for fees for justices of the peace. It is very rarely that notes will be protested by them. I propose to strike out sub-section 3, and to substitute the following :—

“Notaries may charge the fees in each Province heretofore allowed them.”

Mr. WHITE (Renfrew). I made a suggestion to the hon. Minister as to allowing householders to protest notes.

Sir JOHN THOMPSON. Unless the hon. gentleman can give some reason for it, I am disposed to restrict the protesting to justices of the peace when notaries cannot be obtained.

Mr. WHITE (Renfrew). I am not able to say that any inconvenience has arisen up to the present, but I thought that, if the holder of protesting is extended to justices of the peace, it might be extended a little further.

On schedule 1.

Sir JOHN THOMPSON. Moved that schedule one be struck out.

Committee rose and reported progress, and it being six o'clock, the Speaker left the Chair.

AFTER RECESS.

House again resolved itself into Committee on Bill (No. 6) respecting Bills of Exchange, Cheques and Promissory Notes. Bill reported.

1st May, 1890.

Sir JOHN THOMPSON moved the adoption of the amendments made by the Senate to Bill (No. 6) relating to Bills of Exchange, Cheques and Promissory Notes.

Sir JOHN THOMPSON. There are several amendments, some of them important and some unimportant. I will explain them, and ask the House to consider them separately. On page 6, line 24,

begins a substantial amendment, but one that, I think, will not change the policy of the House with regard to the class of notes and bills to which the clause refers. It relates to the acceptance payable at a particular place. The Bill as it left this House, provided in effect, that an acceptance payable at a particular place was a qualified acceptance, but the Bill went on to provide that, notwithstanding that, it should not be deemed a qualified acceptance unless the words were added "payable there and not elsewhere," or some equivalent words. The change proposed by the Senate is in effect that that shall not be a qualified acceptance, but a further provision that we shall come to presently, provides that presentment shall be made at any place designated. The same result is, I think, arrived at, because it is provided by the Act that other parties to the bill shall not be discharged by reason of a qualified acceptance being taken, and this class of acceptances is taken out from the category of qualified acceptances. The meaning may be a little plainer, when I read the exact words of the amendment at page 6, line 84. It reads now thus:

"An acceptance is either (a) general, or (b) qualified; a general acceptance assents without qualifications to the order of the drawer; a qualified acceptance in express terms varies the effect of the bill as drawn:

"2. In particular, an acceptance is qualified which is—

"(a) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated."

Now it is proposed to add, after the word "stated," the words:

"But the acceptance to pay at a particular specified place is not conditional or qualified."

On the same page, at line 26, the Senate proposes to leave out these words:

"Local, that is to say, an acceptance to pay at a particular specified place, an acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere."

That is to be left out, and the same object is to be accomplished by the provision that a bill payable at a particular place is not to be considered a qualified acceptance. The two amendments are for the complete accomplishment of that purpose. We come now to the provision on page 8, with respect to forged instruments. There was a good deal of discussion in this House as to the propriety of adopting a new provision to the effect that the forgery of an endorsement on a bill of exchange should not affect the bank. That proposition did not meet with the approval of this House, and was not pressed. The Senate, however, propose a change in the bill in that direction. They propose to add to section 24, as it passed this House, the following provision:—

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"And provided also, that if a cheque, payable to order, is paid by the drawee upon a forged endorsement out of the funds of the drawer, or is so paid and charged to his account, the drawer shall have no right of action against the drawee for the recovery back of the amount so paid, or no defence to any claim made by the drawee for the amount so paid, as the case may be, unless he gives notice in writing of such forgery to the drawee within one year from the date at which he has received notice of such payment, by the delivery to him of such cheque, of any book or statement containing an entry of such payment, or otherwise; and in case of failure by the drawer to give such notice within the said period, such cheque shall be held to have been paid in due course as respects every other party thereto or named therein who has not previously instituted proceedings for the protection of his rights."

The effect of this addition is that if a forged cheque payable to order is paid upon a forged endorsement, there shall be a special period of limitation, namely, one year after the payment has been brought to the notice of the drawer by a return of the cheque or by an entry which comes to his notice in the bank book. On page 9 there is an unimportant amendment in the line 26, to make the section begin with "and" instead of "but." In the same section on line 25 the word "and" is changed to the word "but." In the same section there is an equally unimportant change; after the word "bill," the words "or note" are inserted. In line 43 there is an addition, after the word "right," of the words, "and without such words thereon, such instrument and any renewal thereof shall be void, except in the hands of the holder in due course without such notice of consideration." In section 32, with respect to the negotiation of bills, there is an amendment to sub-section 2, simply leaving out the words, "if he thinks fit." The next change is in section 42. The section reads thus:

"When a bill is duly presented for acceptance and is not accepted on the day of presentment or the next following day, not being a legal holiday or a non-judicial day, the person presenting it must treat it as dishonored by non-acceptance."

The amendment provides that a change shall be made to two days instead of one, so that when a bill is duly presented for acceptance and not accepted within two days thereof, the person presenting it must treat it as dishonored by non-acceptance. The next change is in section 45, sub-section 7. It is an unimportant, simply adding the words "or acceptance" where the place of payment specified in the bill is any city, town, or village. The next amendment is in section 47. The section reads:

"A bill is dishonored by non-payment:—(a), when it is duly presented for payment and payment is refused and cannot be obtained; or (b), when presentment is excused, and the bill is overdue and unpaid."

"Subject to the provisions of this Act, when a bill is dishonored by non-payment, an immediate right of recourse against the drawer and endorsers accrues to the holder."

The amendment is simply to add the word "acceptor" after the word "drawer," so that it will read: "An immediate right of recourse against the drawer or acceptor or endorsers accrues to the holder." The next change is in section 49. Sub-section 4 of that section reads:

"Notice of protest or dishonor of any bill payable in Canada, shall notwithstanding anything in this section contained, be sufficiently given if it is addressed in due time to any party to such bill entitled to such notice, at his customary address or place of residence, or at the place at which such bill is dated, unless such party has, under his signature, designated another place; and in such latter case, such notice shall be sufficiently given, if addressed to him in due time at such place, and such notice shall be sufficient although the address of such other than either of such above mentioned places; and such notice shall be party seemed to have been duly served and given over all purposes, if it be deposited in the post office at any time during the day on which such protest or presentment has been made, or on the next following juridical or business day."

It is proposed to add "with the postage paid thereon." At the end of the same section there is another amendment. Sub-section 5 reads thus:

"Where a notice of dishonor is duly addressed and posted, the sender is deemed to have given due notice of dishonor, notwithstanding any miscarriage by the post office."

After the word "posted" insert the words "as above provided," so as to mean posted with the postage thereon. In the 51st section there is a slight amendment. It reads thus:

"Where an inland bill has been dishonored it may, if the holder thinks fit, be noted and protested for non-acceptance or non-payment, as the case may be; but it shall not, except in the Province of Quebec, be necessary to note or protest any such bill in order to preserve recourse against the drawer or endorser."

It is proposed to insert the words "subject to the provisions of this Act with respect to the notice of dishonor," the impression being, though perhaps not generally prevalent, that the exemption from protest might imply the exemption from notice of dishonor, and to make that point clear this amendment is proposed. In the same clause there is another amendment. Proceeding with the section, we find it reads:

"But it shall not, except in the Province of Quebec, be necessary to note or protest any such bill in order to preserve the recourse against the drawer or endorser; but in the case of a bill drawn on any person in the Province of Quebec, or payable or accepted in any place therein, in default of protest for non-payment and of notice thereof, the parties liable on the bill, other than the acceptor, are discharged."

It is proposed to insert words which will make the amendment read thus:

"In the case of a bill drawn on any person in the Province of Quebec, or payable or accepted in any place therein, if dishonored or protested for non-payment, as the case may be, the default of notice thereof—"

There is an amendment again in the same section to sub-section *a*, which reads thus :

"When a bill is presented through the post office, and returned by post dishonored, it may be protested at the place to which it is returned, and on the day of its return, if received during business hours."

After the word "return," insert "not later than the day of return or the next juridical day," which will make it read :

"When a bill is presented and dishonored, it may be protested at the place to which it is returned, not later than the day it is returned or the next juridical day."

There is an amendment in sub-section *b*. The sub-section reads :

"When a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, or at a place in Canada, situated not more than five miles therefrom."

It is proposed to leave out the whole of the sub-section *b*, which provides that when a bill, drawn payable at the place of business or residence of some person other than the drawee, has been dishonored for non-acceptance, it must be protested for non-acceptance at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary. That was the subject of some discussion when the Bill was passed before the House, as to the necessity of presentment for non-payment again after the bill had been dishonored by non-acceptance, and it is proposed to remove doubt by striking out the sub-section. There was in former times the practice, not only of presenting for non-acceptance, but likewise of holding the bill till maturity and presenting it for non-payment, and the section seems to have been adopted with a view to that earlier practice. Now it is proposed to leave the matter simply optional. If the holder pleases, he can retain the bill until maturity, and protest again ; but the section as it was might be ambiguous as to whether it was not imposing the necessity for so doing, and it is proposed to strike it out altogether. In section 51, sub-section 9, protest is dispensed with in circumstances which would dispense with the notice of dishonor. The delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his fault, misconduct, or negligence. It is proposed to insert a provision that no clerk or teller shall act as a notary in protesting any note payable at the bank, or any branch of the bank, in which he is employed. The amendment proposed to section 52, provides that presentation for payment is not necessary in order to render the acceptor liable. It is also proposed to insert a provision, which was suggested in this

House but not adopted, that, if any suit or action is instituted before presentation, the costs thereof shall be in the discretion of the court. In section 56, it is proposed to add the words "and is subject to all the provisions of this Act in reference to endorsers." It is proposed to add a sub-section to section 71, as follows:—

"If a bill or note, presented for acceptance, or payable out of Canada, is protested for non-acceptance or for non-payment, a notarial copy of the protest and of the notice of dishonor, and a notarial certificate of the service of such notice, shall be received in all courts as *prima facie* evidence of such protest, notice and service."

In section 86, it is proposed to substitute for the latter portion of the clause, the following:—

"Where a promissory note is made payable at a particular place, it must be presented at that particular place in order to make the maker liable. In any other case presentment for payment is not necessary to make him liable, but the maker is not discharged by the omission to present it on the day it matures. But if any suit or action is instituted, the costs shall be in the discretion of the court, if no place of payment is specified in the body of the note."

The next amendment is to sub-section 4 of section 88, which now reads:

"Where a foreign note is dishonored, protest thereof, except in the Province of Quebec, is unnecessary."

It is proposed to make the sub-section read:

"Where a foreign note is dishonored, the protest thereof is unnecessary except for the preservation of the liability of endorsers."

The next amendment is to sub-section 2 of section 90, in which it is proposed to insert the word "duly" before the word "sealed." That is in the case of a corporation. There is verbal amendment to section 93. It is proposed to omit altogether section 96 which provides that the rules of the common law of England, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to bills of exchange, promissory notes and cheques. I understand, from reading the debates in which that amendment was suggested, that the section was understood to be unnecessary, and possibly leading to some uncertainty as to what should be considered, in this country, the common law of England, and whether we were not, in one sense of the use of that term, including too much of the statute law, and in another and more restricted sense, in which we use the term common law, were leaving out statutory provisions altogether. I do not understand that there is any provision in the statute of Anne which is not expressly embodied here; but the omission of the clause will leave the matter

as it stands now, to be determined by the rules of the common law. In the first schedule there is an amendment, which is merely verbal, and is made to correct an error. The schedule was copied from the English Act and it included the words "a householder in said district," because the English Act provides for householders making a protest in cases where a notary public or a justice of the peace is not available. We have restricted the right of protesting in the absence of a notary to a justice of the peace; therefore, it is not necessary to say anything about a householder.

Mr. EDGAR. I suppose the Minister of Justice has no idea of pressing those amendments to-day, because they are neither immaterial or short, and unless we have an opportunity of seeing them in the speech of the Minister, as it will appear to-morrow in *Hansard*, it will be perfectly useless to attempt to discuss them, and unless they are printed in the Votes and Proceedings as well.

Sir JOHN THOMPSON. I will not proceed to-day against the wish of any member of the House. It was well, I thought, to move it, in order to bring these to the notice of the House, but I will wait till the *Hansard* report of my explanations is published, and acquiesce in any further publication that is thought desirable.

Mr. DAVIES (P.E.I.) I think it is very desirable they should be published in the Votes and Proceedings, or in the separate form, otherwise we never would understand them.

Mr. MITCHELL. I quite agree with the suggestion. With all the attention that we were disposed to give the Minister's explanations, and no doubt they were full and explicit, it was utterly impossible to follow them, and more particularly owing to the number of alterations in the original Bill, and I think it will be necessary to see them in the Votes and Proceedings.

Motion agreed to.

5th May, 1890.

Sir JOHN THOMPSON moved further consideration of amendments made by the Senate to Bill (No. 6) relating to Bills of Exchange, Cheques and Promissory Notes.

On the third amendment.

Sir JOHN THOMPSON. This is an amendment to section 19 which refers to a qualified acceptance, that is to say, acceptance payable at a particular place. The object of the amendment made by the Senate is to provide that a bill payable at a particular place is not

thereby a qualified acceptance. They leave out sub-section 3 of the Bill, and, later on, it is provided that the bill shall be presented at the place indicated, and the effect of non-presentment is, as to the acceptor, simply a question of costs in the discretion of the court, in any suit which may arise. The amendment gets rid of the words: "payable only there and not elsewhere." It establishes the principle that an acceptance payable at a particular place is not a qualified acceptance within the meaning of this Act, and that, therefore, an acceptance in that form, does not discharge the other parties to the instrument. It goes on to provide that there must be a presentment at that place.

Mr. MILLS (Bothwell). I wish to ascertain from the hon. Minister, whether there can be a qualified acceptance, as to place?

Sir JOHN THOMPSON. Yes, there can be; but the result of that qualification is not the discharge of any previous party to the bill. The result is simply that it must be there presented, under the penalty of costs in regard to the acceptor.

On the fourth amendment.

Sir JOHN THOMPSON. This amendment is subsidiarily to the last. It merely leaves out sub-section *c* of section 19, regarding a local acceptance.

Mr. DAVIES (P.E.I.) So that, suppose a bill is made payable at a particular place and not elsewhere, it is not a qualified acceptance.

Sir JOHN THOMPSON. No; there is no qualified acceptance within the original meaning of the term, as the Bill left this House except as to the endorser.

Mr. DAVIES (P.E.I.) Then, the Senate have deviated from the English statute.

Sir JOHN THOMPSON. Yes. If a man accepts a bill payable at the Bank of Montreal and not elsewhere, he is still liable at any place, provided the bill is presented at the Bank of Montreal.

Mr. DAVIES (P.E.I.) How about the endorser?

Sir JOHN THOMPSON. He is in the same position as before. Presentment is necessary as to him.

Mr. DAVIES (P.E.I.) I understand that by the common law, which this Bill leaves when not expressly altered, if an acceptor accepts payment at a particular place and not elsewhere, you must, to hold the endorser liable, present the bill on the day it falls due at that place.

Sir JOHN THOMPSON. Yes.

Mr. DAVIES (P.E.I.) I do not understand that there is any express stipulation in this Bill altering that common law by making

the endorser continue liable, whether the presentation be made according to the expressed contract or not.

Sir JOHN THOMPSON. I think, if we find that the Senate amendments have not worked out that properly, we should amend the amendments, so far as the endorsers are concerned, but I think I found the other day that that was worked out.

On the fifth amendment.

Sir JOHN THOMPSON. This embodies an amendment to the law with regard to forgery. The House will remember that, the other afternoon, when the Bill was before the House, I urged that a section should be adopted to relieve the bank from the consequences of paying on a forged endorsement. The Senate has gone to some extent in that direction. They provide the following amendment:—

"Page 8, line 8.—After 'forgery' insert 'And provided also, that if a cheque, payable to order, is paid by the drawee upon a forged endorsement out of the funds of the drawer, or is so paid and charged to his account, the drawer shall have no right of action against the drawee for the recovery back of the amount so paid, or no defence to any claim to the drawee for the amount so paid, as the case may be, unless he gives notice in writing of such forgery to the drawee, within one year from the date at which he has received notice of such payment, by the delivery to him of such cheque, of any book or statement containing an entry of such payment, or otherwise; and in case of failure by the drawer to give such notice within the said period, such cheque shall be held to have been paid in due course, as respects every other party thereto or named therein, who has not previously instituted proceedings for the protection of his rights."

Mr. PATERSON (Brant). I think that is reasonable enough, with the exception of the provision that notice must be given in writing. If that were struck out, the banks would still have to be notified, but not necessarily in writing. In these days, business is done to a considerable extent through the telephones or verbally, and when a merchant finds out that a forged check has been charged to his bank account, he may, not being acquainted with the law, simply notify the bank through the telephone. If the bank clerk to whom the notification was given omitted to attend to the matter, the merchant, thinking no more about it, might at the end of the year be held responsible through having given insufficient notification.

Mr. DAVIES (P.E.I.) The hon. gentleman would get rid of a very small amount of present trouble at the expense of a great deal of future litigation. There is nothing more calculated to bring about trouble than telephone communications in matters of this kind, and nothing concerning which there would be so much contradictory testimony. It is a very easy matter for the merchant to send a notice in writing, and no practical inconvenience would arise from this clause.

Mr. WELDON (St. John). In the case mentioned by the hon.

member for Brant of a telephone message, an investigation would follow, as a matter of course, but to allow the notification being made verbally would only create confusion. There is no evidence so conflicting as that with regard to verbal statements.

Mr. CAMPBELL. The practice has always been heretofore that if the bank pays a cheque bearing a forged signature, it is held liable. A great many people do business with banks, who have very little knowledge of the forms of law, and would not be likely to know what is required under this law; and as soon as the bank got notice, whether by telephone or in any other way, that the signature was a forged one, that ought to be sufficient. If you insist on notice being given in writing, you will create a great deal of confusion among those who are not conversant with the requirements of the law. When you provide that the bank shall have notice, I do not think it matters much whether the notice be by telephone or otherwise.

Mr. WELDON (St. John). When the cheque is charged against the account, the merchant will soon see that proper notice be given.

Mr. PATERSON (Brant). But as soon as the notice is given through the telephone, the cheque would be struck off his account, and there would be no charge for it against him; but at the end of the year, simply because he did not give written notice, the cheque might be charged again.

Mr. WELDON (St. John.) There are so many circumstances surrounding a forgery, that an investigation would be sure to be held, and a verbal notification would give rise to a good deal of contradictory evidence.

Sir JOHN THOMPSON. In 99 cases out of 100 the information comes to a person who is charged with a cheque within a month or two after the forgery can have been effectual or after the money has been paid, and, if we allow a year, I think we are giving a very liberal time. If we allow the notice to be given verbally, there may be some misunderstanding in the conferences that will ensue, and the result may be doubtful as to whether the bank understood that the cheque would be repudiated or not. I think it is better that this should be clearly stated.

Mr. WHITE (Renfrew). This amendment provides that the notice may be given by the delivery of the cheque, or any book or statement containing the cheque, or otherwise. I think the delivery of the cheque should be sufficient. The delivery of the pass-book containing an entry of the cheque would not be sufficient, because most people receive their pass-books at the end of the month and see a cheque they have given charged to them, and do not enquire further.

Mr. DAVIES (P.E.I.) If any man received his pass-book he would certainly check over the cheques which were entered against him and see whether they were forgeries or not.

Mr. WHITE (Renfrew). This is a question of a forged endorsement.

Mr. WELDON (St. John). I can see the difficulty. The delivery of the pass-book would hardly be giving notice of a forged endorsement.

Mr. WHITE (Renfrew). The cheque may have been properly issued, but, if the cheque itself is not shown to the drawer, he cannot tell whether the endorsement has been forged or not.

Mr. PATERSON (Brant). It must be remembered that this is a concession to the banks in comparison with the old law. It might be impossible for a person, even after he had the cheque in his hands, to tell whether it was a forgery or not. It has been customary amongst business men, that when a person who has an account sends them a cheque payable to their order, they are careless whether they get a receipt or not, because they take it for granted that the cheque is properly made. Here you require that notice must be given in writing. A great deal of this business is done over the telephone. A conversation might take place over the telephone with the bank, and that would not be sufficient. The Minister of Justice and some of my hon. friends on this side of the House say that it would lead to litigation afterwards; but it seems to me, that two or three verbal communications of that kind with the bank would prove beyond a doubt that they had the notice, because the bank clerks could not forget that they had received the notice in regard to that particular note. A person not conversant with the law might allow the note to remain in abeyance, thinking it was perfectly understood in the bank, and would not give the notice in writing.

Mr. WELDON (St. John). I can understand the difficulty suggested in reference to the pass-book. But a man finds a cheque charged against him payable to John Smith. He has given a cheque to John Smith, and he thinks it is all right; but, if he gets the cheque returned to him, I think, in nine times out of ten, he will know the handwriting of the endorser.

Mr. PATERSON (Brant). Not at all.

Mr. WELDON (St. John). It seems to me that if you sent a cheque to a man and did not get it back within a year, you would enquire in regard to it.

Sir JOHN THOMPSON. I think there is something in what my hon. friend from Renfrew (Mr. White) says, but I think the return of the cheque should be sufficient, because the drawer is the person

primarily responsible for having made it, and it is for his convenience that it was made, and if he gets an endorsement he ought to be responsible for it. That does not deprive the endorser of any rights against the drawer of the cheque. I would propose an amendment to amend the amendment.

Mr. PATERSON (Brant). Before that is moved, I would say that my hon. friend (Mr. Weldon, St. John), is quite wrong in stating that it would be known whether many of these endorsements were forged or not. Many cheques are made payable to order, and you do not know the signature of the party to whose order the cheque is made payable. This is a concession to the bank. The cheque is given from Ottawa payable at Montreal, where it is cashed. The diligence of ascertaining that this is not forged should rest upon the bank in Montreal, who have better means of knowing it than the person here. It requires caution on the part of the bank. By adopting this provision you relax the vigilance required on the part of the bank.

Mr. WELDON (St. John). It is not the case, as my hon. friend puts it, that the bank can wait 48 hours before making enquiries. It would be unfair to the bank that a man should wait five years and eleven months and then come in and say that the cheque was forged. If the cheque is given to the individual himself and he loses it, the drawer is charged, but if he sends the cheque through by letter and it never reaches the drawee, and falls into the hands of other parties, then of course the drawer is not relieved. If my hon. friend, in the course of business, sent a cheque to a firm in Montreal and did not get an early acknowledgment, he would feel disquieted.

Mr. KIRKPATRICK. There is no doubt, that in many hundreds of thousands of cases where these cheques have gone through banks, we have very seldom heard any cases of payment of forged cheques or forged endorsements. The reason of that is, that the banks have been heretofore liable for it, they have exercised great vigilance in seeing that the person to whom they pay the cheque is known to them. If the cheque is sent from here to Montreal, it is paid through an agent to the bank there, and the man who goes to get that cheque cashed must be known to the bank. They could refuse to pay it at Montreal, unless they were satisfied of the identity of the applicant. It is only done there as a matter of courtesy. He has not got his account there. It is paid to whom it is sent, and the party generally deposits it in his bank. Any amendment to this law which will relax the vigilance of the banks, I think, is to be deprecated. I think we would be better without any amendment at all.

Mr. WELDON (St. John). Then my hon. friend would say that a man could lie by until the expiration of six years and then come in and say the endorsement is forged. What position would that bank be in then? In England, where they understand these things, they have chosen to alter the law, and I think we have a right to do it also. According to the hon. member for Frontenac, the bank has got to run the risk of refusing the cheque, and be responsible to the drawer of the cheque for damages.

Mr. KIRKPATRICK. No; the account is here. They do not promise to pay that cheque in Montreal. If the agency of the bank pays it in Montreal, they must have the person identified who comes for the money. They ought to be vigilant in seeing the person to whom it is paid, is the person for whom it is intended.

Mr. WELDON (St. John). In ninety-nine cases out of a hundred, cheques are paid at the bank in the place where they are drawn.

Mr. DAVIES (P.E.I.) I understand that the Minister of Justice accepts the amendment of the member for Renfrew (Mr. White). I think that removes any grievance that can exist.

Sir JOHN THOMPSON. I think we can appreciate the full weight of the objection to the change by testing the illustration of my hon. friend from Brant (Mr. Paterson). He puts the case of a merchant say in Ottawa, sending a cheque to his creditor in Montreal. He admits that there is no hardship at all, provided the drawer knows the endorsement of the person to whom he makes the cheque payable. There, surely, can be no hardship in that case. He receives back his cheque. He either knows, or does not know, that the endorsement is a forgery; he ought to know it, because he has required his bank to pay on the endorsement of that person. Surely he cannot say the loss by any forgery should fall on the bank for not knowing the signature of the person to whom he has made the cheque payable, and whose signature he does not know himself, and if he does not know it, he has twelve months to find it out, and there is hardly one business transaction in a thousand in which he would not find it out by having information from his creditor that he had not received his remittance. Now, the hon. gentleman says that the bank in Montreal would not be obliged to pay and could demand identification. But the bank in Ottawa on whom, perhaps, the cheque is drawn, would not be bound by the identification in Montreal either, nor would that be any information to the bank in Ottawa. The bank in Ottawa must pay on its judgment of whether the signature is forged. The true test of the genuineness of the signature, I think, is to give the man back his cheque, and give him twelve months to ascertain whether that is a correct signature or not.

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Mr. PATERSON (Brant). The Minister must not lose sight of the fact that we are speaking about what has been the law and the custom. If this clause is struck out altogether and the law stands as it has been for years, I do not see what hardship it could be to the bank. The established custom for years among business men has been to draw a cheque payable to the order of one of their creditors, and when that has been done they have been very careless as to whether the receipt was given or not, because the very fact of drawing their cheque payable to order and getting that cheque back, paid by the bank, having it in their possession, they have considered it equivalent to a statute. It would be quite natural if, not having heard from the creditor, not having received a receipt from him, they should be careless and say: Well, according to our custom we have made it payable to order, and the cheque is either not charged against us, or if it is charged against us, it stands as a receipt.

Mr. CAMPBELL. I do not see why any change in the law, which has always worked well and in respect of which no complaints have been made by the banks, should be made. It is one that is now thoroughly understood and to which the people have become accustomed. If I draw a cheque on the bank of Ottawa to the order of John Smith payable in Montreal, and John Smith takes that cheque to the Bank of Montreal in Montreal, the bank need not pay the cheque unless they please to do so. But before they do pay it, they use due diligence to see that the cheque is properly endorsed by John Smith, and if they do not know him, they ask that he be identified. If payment is made by the Bank of Montreal, the onus rests on that bank. A long period may elapse before a forgery is discovered, as you may have a running account with a business man and no settlement be arrived at, and you do not take the trouble to notice whether you receive an acknowledgment of every cheque or not. Unless there can be some reason shown why the law should be changed, and unless the banks have suffered some hardship, we should not readily change the law to which the people have become accustomed, and which has given general satisfaction.

Mr. MILLS (Bothwell). This matter is, in a large degree, one of convenience. In the vast majority of cases there is no loss sustained, either by the banks or by the makers of the cheques. Under the present law, and with the responsibility resting on the banks, they are called upon to ascertain whether the party who presents the cheque is the party entitled. If it be presented by a stranger, the bank usually asks him to come with some one known to the bank, Do away with that responsibility, and that precaution taken by the

banks is not adopted. A dishonest man very seldom likes to face the bank, and a refusal to present a person to identify him at once places the bank on its guard.

Mr. WELDON (St. John). The argument of the hon. member for Bothwell would have been a very good one in favor of the original clause of the Bill, which would have relieved the banks of all responsibility. If this amendment is adopted, the banks will not relax their vigilance in regard to the payment of cheques; but, if the maker of a cheque has ascertained that a forgery has been committed, he is bound to give notice to the bank at an early day. At the present time that notice may be delayed five years and eleven months, until it is impossible to find out the guilty party.

Mr. TISDALE. I have a very strong objection to any change being made in the law. The clause was thoroughly threshed out before in this House, and no cause for any change has been adduced. The people have become accustomed to the practice, and the bankers are not put to any unnecessary trouble and meet no losses. I am opposed to any provision that will tend to relaxation of diligence on the part of the banks.

Mr. CHARLTON. I thoroughly agree with what has fallen from the hon. member for South Norfolk (Mr. Tisdale). I am unable to see why the Government should not with as great propriety legislate for the repayment of money which one party has handed to another party, but has been lost by him. Under the old law when a man drew a cheque payable to order, the bank was responsible if they paid that cheque to the wrong party. That was an equitable arrangement, because the bank had the benefit of the deposit, and the cheque was paid out of funds left in the hands of the bank for such purpose. The law has worked well as it is, and as no cause of complaint has been made out, it should be allowed to remain, and this amendment should not be agreed to.

Mr. BLAKE. I would not object to a provision that if we limit the time to a very short time after the drawing of the cheque within which to ascertain whether it was a forgery, a notice should be given to the bank.

Mr. PATERSON (Brant). The Minister of Justice previously yielded the point in deference to the wishes of a large number of members of the House, and I ask the hon. gentleman to maintain his position and strike out this clause.

Sir JOHN THOMPSON. I will try the sense of the House first on the motion which I now move to strike out the following words in page 8, line 8, "on any book or statement containing an entry of

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such payment or otherwise." Subsequently, I will take the sense of the House on the clause as amended.

Motion agreed to.

Sir JOHN THOMPSON. I move concurrence in the amendment as amended.

Mr. McMULLEN. I think the expression of opinion given on both sides of this House, by the hon. member for North Norfolk (Mr. Charlton), and the hon. member for South Norfolk (Mr. Tisdale), should meet with the general approval of this House. The business transactions of the country in the use of cheques, have been carried on in the past without any serious complaints from the banks, and I do not think this innovation should be made. If a man makes a cheque payable to a person at a distant point, it facilitates his business, and it is the duty of the bank to take precaution to see that the endorsement of the party to whom the cheque is made payable is properly made. The best evidence that the old system has been successfully operated in the past is that few, if any, difficulties have arisen under it. When this law has worked so admirably in the past, it would be imprudent on the part of this House to alter the principles on which business has been transacted in this country for many years. If this amendment is accepted you will find that banks will overlook the precautions they have taken in the past and the drawers of cheques will be put to considerable inconvenience and loss. I think we should continue in force a law which has given such general satisfaction, and not make an alteration in it which will place the trading public in an awkward position. In my opinion it is the duty of the bank to see that the cheque is properly endorsed.

Mr. BLAKE. I move that the amendment be further amended by leaving out all the words after "one" down to "payment" and inserting the words, "a month after he has acquired notice of such forgery."

Sir JOHN THOMPSON. Before the question is taken I would like to say that, for my part, I would be quite willing to adopt that amendment. Instead of going to the trouble of taking a vote, I would like to have some expression of opinion from hon. gentlemen on the matter.

Mr. WELDON (St. John). I think that amendment seems to meet the case.

Mr. CHARLTON. I would prefer to have the amendment dropped out altogether, and leave the law as it formerly stood.

General LAURIE. I should prefer to see the clause dropped out altogether.

Mr. TISDALE. So should I.

General LAURIE. The system at present prevailing has worked exceedingly well in the past, especially for those who live at long distances from banks. Our only means of paying accounts has been by sending cheques, and we have had to trust to parties receiving them endorsing the cheque as a receipt. I have very much regret that any other plan should be adopted.

Mr. BLAKE. I hope the hon. gentleman will see that the proposed amendment is not open to this objection. The amendment is : that if you have acquired notice of the fact that the cheque is forged, you ought, within a month, to give notice to the bank. You are not to hold it in your pocket for five years and eleven months.

Mr. TISDALE. This amendment is sure to lead to a great deal of trouble and confusion as to what notice is. I think the safer way is to leave the law as it stands at present.

Mr. WHITE (Renfrew). My opinion is, that if the drawer of a cheque gets notice of a forged endorsement, he is not likely to keep it in his possession for five years and eleven months. He is more than likely to give the bank notice just as soon as it comes to his knowledge that the cheque is forged. But the law as it has stood heretofore seems to have worked without any considerable friction, and, for my part, I would prefer leaving it as it is, and striking out the Senate amendment altogether.

Mr. BOYLE. I prefer the amendment of the hon. member for West Durham to the proposition of the hon. Minister of Justice, but I prefer the old law to either of them. But I am in this difficulty, that by voting for the amendment of the hon. member for West Durham, I would commit myself to the amendment of the hon. Minister of Justice. Under these circumstances, I feel that the only safe course for me to take will be to vote against the amendment of the hon. member for West Durham and also against the proposition of the hon. Minister of Justice. The law has worked so well that I think no change should be made, unless some improvement on this amendment is proposed.

Mr. BLAKE. The hon. gentleman will observe that by voting for my amendment, which he prefers, he may carry it ; and after carrying it, he is quite at liberty to vote against the amendment as amended ; whereas, if he votes against my amendment, he may have the worse proposition carried, instead of the better.

Mr. WELDON (St. John). A cheque payable to order is really an innovation. The effect of the amendment will be that the bankers, to protect themselves, will revert to the old system.

Mr. DAVIES (P. E. I.) I do not see how anyone can object to the

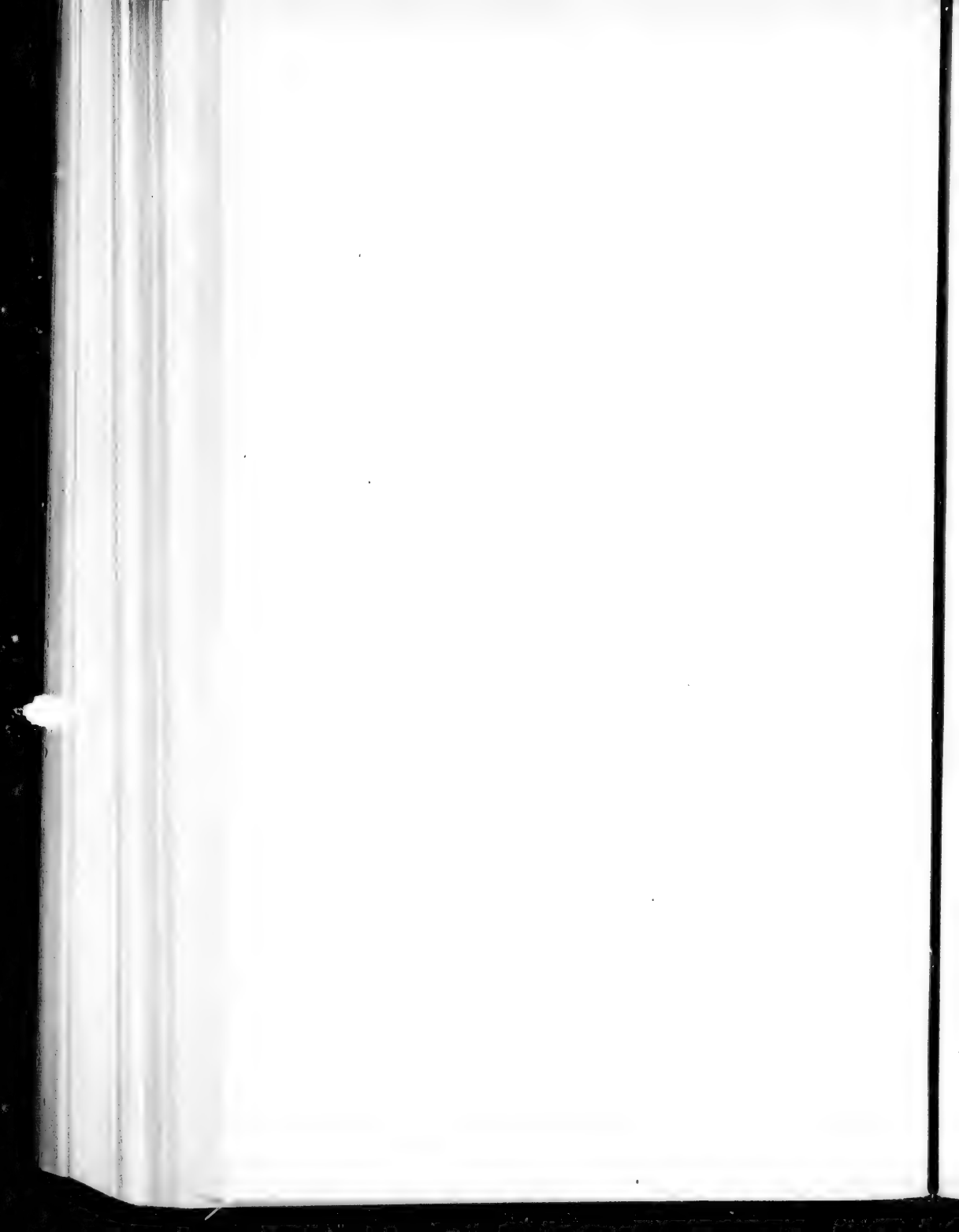
amendment proposed by the hon. member for West Durham. That a man who has drawn a cheque and receives notice that its endorsement has been forged, should give the bank notice within a month, is not a unreasonable proposition. There can be no possible injustice to any one in such arrangement.

Mr. CHARLTON. With regard to the assertion of the hon. member for St. John (Mr. Weldon), that cheques are generally made payable to bearer, my experience has been quite the reverse. For my part, I never make a cheque payable to bearer, in order to guard the interest of the person who receives the cheque. The amendment proposed by the hon. member for West Durham is a very great improvement, which I am willing to accept, if afterwards I shall be free to vote to leave the law as it was before. I would ask whether we can do that?

Mr. BLAKE. Certainly. If my amendment were carried, the clause as amended would be before the House, and the hon. gentleman could vote yea or nay on the clause.

Amendment of Mr. Blake agreed to.

House divided on amendment as amended.



SENATE DEBATES, 1890.

BILLS OF EXCHANGE, CHEQUES AND PROMISSORY NOTES.

SECOND READING.

21st March, 1890.

Hon. Mr. ABBOTT moved the second reading of Bill (6) "An Act relating to Bills of Exchange, Cheques and Promissory Notes." He said: I suppose the House will not expect me to enter upon the details of this Bill on its second reading. It is almost a reproduction of the existing law—in fact it is a sort of a code for promissory notes and bills of exchange, the first that has been made under the power given to the Federal Parliament by the British North America Act. Every clause will be considered in detail in Committee, and in order that members may have time to look carefully into the Bill and make up their minds about it, I propose to submit it to the Committee of the Whole on Wednesday next.

Hon. Mr. SCOTT. This Bill has just been handed to me, and I am not in a position to say much about it; but my hon. friend will remember the promise he made yesterday, that he would get somebody in the Department of Justice to strike off a few slips showing what the changes are in this Bill?

Hon. Mr. ABBOTT. I have given such orders. It is not very easy to show what all the changes are, but I propose to show in what respect the law is to be changed.

Hon. Mr. KAULBACH. The changes are, briefly, to make the law uniform throughout the Dominion.

The motion was agreed to, and the Bill read the second time.

PROGRESS IN COMMITTEE.

The House resolved itself into a Committee of the Whole on Bill (6) "An Act relating to Bills of Exchange, Cheques and Promissory Notes."

(In the Committee.)

26th March, 1890.

On the 2nd clause.

Hon. Mr. ABBOTT. There is no portion of this clause which I understand to vary in any degree the existing law.

Hon. Mr. SCOTT. Where are the definitions taken from? They are not in any statute of ours at present.

Hon. Mr. ABBOTT. They are mainly taken from the English law, I understand, which is now in force. The English Act is like this: a species of codification of the entire laws with regard to bills of exchange, cheques and promissory notes. The definitions are taken from the English Act, which my hon. friend will find in Chalmer's "Treatise on Bills and Notes." There are one or two left out—for instance, the word "bankrupt," as there are no bankrupts here.

On section 3.

Hon. Mr. ABBOTT. This definition is taken from the same Treatise, and I believe from the English law also, and every hon. gentleman who has read the law of bills of exchange will recognize the usual definition.

The clause was agreed to.

On section 4.

Hon. Mr. ABBOTT. The only portion of this section which can be regarded as new is sub-section 2. That is taken literally from the English law, and it is simply a provision which prevents the possibility of a holder being defeated in his claim on a bill by proof that although it appears to be an inland bill it was really either made or accepted in a foreign country. This is the reason given by Mr. Chalmers, and I presume it is the correct reason.

The clause was agreed to.

On clause 6.

Hon. Mr. ABBOTT. Sub-section 7 of clause 6 makes some change. At present it is understood that a bill payable to the treasurer or other official of a society is void for uncertainty. There are several judgments in that sense. They are cited here—I think those that are cited are English judgments; but it is evidently a subject that ought to be cleared up, and it has been cleared up here, as it is cleared up in the English law, by making a bill valid which is addressed to any one person holding any particular office for the time being.

The clause was agreed to.

On section 8.

Hon. Mr. ABBOTT. Some of the sub-sections of section 8 are supposed to alter the law in some respects. For instance, sub-section 3 provides that a bill is payable to bearer which is expressed to be

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so payable, or which the only or last endorsement is an endorsement in blank—the name only of the endorser. The difference, if there be a difference, is in this : that if the last endorsement is a blank endorsement it renews the negotiability of the note or bill, which may have been limited by a previous endorsement. It is not permitted under this measure to stop the negotiability of a bill by omitting to make it payable to order. For instance, a bill is endorsed "Pay to John Smith." That bill remains negotiable. John Smith has the right to endorse it, and he may endorse it in blank, and if he does so it becomes a bill payable to order. I am not prepared to say that that is not the law now, but it is a point on which there is some doubt, and this clears it up.

Sub-section 4 is changed in a slight degree, in conformity with the principle which I have just mentioned as being applicable to section 3. It embodies, in so many words, the rule that as long as the bill does not contain express words prohibiting transfer the bill remains payable to order. That was the Scotch law ; it is now universal in Great Britain. It was adopted into the English law under their new Bill.

The clause was agreed to.

On section 9.

Hon. Mr. SCOTT. I cannot understand the wisdom of introducing sub-clause (c) into this Bill.

Hon. Mr. ABBOTT. That is a clause embodying a practice in frequent use of late years, and I doubt if its legality has ever been disputed. The principle is now adopted almost universally in loans on time—that is to say, if the interest is not paid, or if any instalment is not paid when due, the whole debt becomes due.

Hon. Mr. SCOTT. It is an entirely new principle in Canada. The objection to this Bill is this : as I get into it I find that it will take a great many years to find out what the law is. We are going to have all the decisions of our courts upturned with regard to bills and notes. In my opinion, it would be much better to trust to the precedents established by the decisions of our courts. Under this Bill all our valuable reports are going to be set aside as futile, and new precedents are to be established.

Hon. Mr. ABBOTT. I am not sure that my hon. friend's criticism is quite correct, for he will perceive that the changes we are making have already been sanctioned by the courts, and this clause is drawn in accordance with the decisions of the courts.

Hon. Mr. SCOTT. That if an instalment on a note is not paid

within the time, then the whole amount becomes due? I don't think my hon. friend will find any law for that in Canada.

Hon. Mr. ABBOTT. This is the law in England.

Hon. Mr. SCOTT. By special statute there?

Hon. Mr. ABBOTT. By a statute that has been in force there for some considerable time, and that law rests on the decisions of the courts.

Hon. Mr. SCOTT. Then a single day of a mistake in a man paying a \$1,000 instalment on a note for \$10,000, payable in ten instalments, makes it all become due?

Hon. Mr. ABBOTT. My hon. friend will find that it is not an uncommon thing to make such a provision in other important transactions—mortgages, for instance.

Hon. Mr. SCOTT. What I say is this: that in an important document, such as a mortgag, the mortgagee may come into court with it, but he cannot enforce it summarily—he cannot get out an execution within ten days, as he can on a note.

Hon. Mr. ABBOTT. He cannot get it in ten days on a note either, if the maker has a defence.

Hon. Mr. SCOTT. It is presumed that there is no defence. The only defence would be that he did not make the note. Say he made a note for \$10,000, \$1,000 payable at a future day and the balance payable in nine instalments. The first payment by oversight of a single day is overdue and the maker has failed to provide for it. He can be sued immediately for the whole amount under this Bill, and in ten days execution will issue. I think it is a very oppressive and arbitrary clause.

Hon. Mr. KAULBACH. It does seem certainly hard. It has been the law with regard to mortgages that in default of payment of instalment or interest the party could foreclose the mortgage.

Hon. Mr. ABBOTT. My hon. friend will see that the alternative lies between letting people do what they like and prescribing what they shall do. If a man can satisfy the exigencies of his own business by making an undertaking in this form under conditions of the law, surely he should be permitted to do it. He knows the conditions, and if he does not choose to make a note which will expose him to such a contingency, there is no obligation on him to make it.

Hon. Mr. SCOTT. I think my hon. friend had better let that clause stand for the present.

Hon. Mr. ABBOTT. I have no objection.

On clause 12.

Hon. Mr. ABBOTT. This is a provision made to remedy a doubt

in the existing law. I fancy there are decisions upon it, but this is to clear up the doubt and lay down a fixed rule, which is to be binding on all occasions in future, and it seems to be an equitable rule, because if there is any inconvenience caused by the exercise of this right, it is thrown on the person who makes the blunder.

The clause was agreed to.

On clause 13.

Hon. Mr. POWER. It has been suggested by the hon. gentleman from St. John that this clause might be amended by inserting after the word "Sunday" the words "or other non-judicial day." The paper might be dated on a statutory holiday, for instance.

Hon. Mr. ABBOTT. I do not know that it has ever been contended that a note dated on a statutory holiday is null.

Hon. Mr. POWER. As some doubt has been expressed by business men upon this point, would it not be better to remove any doubt by inserting the words I have suggested?

Hon. Mr. ABBOTT. It is a pity to put anything into the Bill which is not absolutely required. However, I will consider if it is necessary.

On clause 14.

Hon. Mr. DICKEY. It seems to be an anomaly that a bill payable on demand is payable really on demand, while a bill payable at sight is allowed three days grace.

Hon. Mr. ABBOTT. It is not proposed to alter the law in that respect. We do not want to alter the law where we can help doing so.

Hon. Mr. POWER. If my hon. friend looks at clause 2 of clause 14, I think he will find that there is some ground for the doubt expressed by the hon. gentleman from St. John.

Hon. Mr. ABBOTT. I will have it looked into.

On clause 18.

Hon. Mr. SCOTT. This is a strange provision, that where a man declines to accept a bill payable at sight, and subsequently accepts it, the days of grace are counted from the day the bill was first presented to him. I think it is rather contrary to common sense.

Hon. Mr. ABBOTT. In the absence of an agreement.

Hon. Mr. SCOTT. It is presumed that when a man says, "I will accept that bill," the time should run from then.

Hon. Mr. ABBOTT. In my opinion the view taken of this clause is the right one, because the original contract with the holder is that on the presentation of the bill, the drawee shall pay it. If, when

he accepts, he desires to vary the date, he is permitted to do so by agreement with the holder.

The clause was agreed to.

On clause 19.

Hon. Mr. ABBOTT. This is a clause about which there was a good deal of debate in the other House, and it seems to be a question whether there is anything new in it or not. There is no substantive law to which we can refer for the express letter of it, and it is not always easy to say whether a proposed clause is new or not. I would suggest that it be allowed to stand for the present.

On the 26th clause.

Hon. Mr. ABBOTT. This is framed to meet difficulties which have very frequently arisen as to whether a person was liable when he added to his signature some qualifying word, such as "Agent," without saying for whom he was agent. By this clause he is not liable if he states for whom he is agent, but unless he states for whom he is agent he is liable.

Hon. Mr. SCOTT. Suppose he signed for a company, ought he to be liable?

Hon. Mr. ABBOTT. Not at all, if he states the company for which he is agent. The mere addition of "agent" to his signature does not relieve him.

Hon. Mr. SCOTT. But if he signs as agent for a company?

Hon. Mr. ABBOTT. Then he comes under the first part of the clause. If he designates himself as acting in a representative capacity he is not liable, but if he simply signs as "agent" he is liable.

Hon. Mr. POWELL. If he says he is agent for John Smith he is not liable, but if he says that he is simply an agent he is liable.

Hon. Mr. ABBOTT. Yes; that puts the distinction very clearly. This clause is in accordance with the English system, and we shall have there, to begin with, a fund of decisions.

Hon. Mr. SCOTT. There are cases in our own courts in the same direction.

The clause was adopted.

Hon. Mr. McCLELAN, from the committee, reported that they had made some progress with the Bill, and asked leave to sit again.

COMMITTEE POSTPONED.

The order of the Day being read,—House again in Committee of the Whole on Bill (6) "An Act relating to Bills of Exchange, Cheques and Promissory Notes."

Hon Mr. KAULBACH said: Many of the gentlemen who are interested in the discussion of this Bill are absent, and I think it would be well, if my hon. friend considers it will not interfere with the public business that the consideration of the Bill be postponed until after the adjournment.

Hon. Mr. ABBOTT. My hon. friend anticipates what I was about to say to the House with regard to this Bill. A good many of the gentlemen who take an interest, and some who took part in the debate yesterday, have left already, but they called upon me and asked as a particular favor that the Bill should not be proceeded with in their absence. I therefore move that the Order of the Day be discharged, and that it be an order for the 10th of April next.

Hon. Mr. HAYTHORNE. Will the hon. gentleman, during the recess, see that the promised slips showing the changes in the law are distributed to members?

Hon. Mr. ABBOTT. My hon. friend does not quite realize the difficulty. There is no statute, nothing to which we can refer as containing the existing law, and, therefore, it is practically impossible to do what I did on one occasion—I think it was when the Customs Act was before us two or three years ago—print the Bill and the existing law in parallel columns, showing the difference between them. The changes in the law are not absolute, positive changes, except in very minor particulars. Where they appear to change the law they really do scarcely anything more than settle disputed points. There is really no absolutely new legislation in the Bill, from one end to the other. I have a further table from the Minister of Justice, showing the clauses in which there is some difference between the English law and our law, and those of the clauses in which we have what may be called, in one sense, a new enactment inasmuch as it settles difficulties that occurred previously. I would be happy to communicate that to my hon. friend if he desires it, but I do not think I could profitably undertake to publish a regular statement of the changes, because there is no date from which to commence. There is no clear statement of the present law on promissory notes in existence. It is taken from judgments, from decisions of the courts, from custom, from the code of Quebec, from the statutes in different Provinces, and largely from the existing definition of the law in England; but I shall be prepared, as I was yesterday, to point out in advance, on any clause being called, exactly what alteration, if any, is made by that clause in what is generally understood to be the existing law. I do not think I could do more than that.

Hon. Mr. HAYTHORNE. The hon. gentleman congratulates the

House on the forward state of the business, but I beg to point out that there are two important private notices of motion which have been postponed from day to day. One of them is in the hands of my hon. friend from Alberton, and is a motion which is of very special interest to the people of Prince Edward Island. I cannot, of course, say whether my hon. friend has been induced to postpone that motion in consequence of the adjournment, or what other cause, but I can only say that the people of Prince Edward Island take a very keen interest in the motion of which the hon. gentleman has given notice and which has been postponed more than once.

Hon. Mr. KAULBACH. I am glad to hear my hon. friend speak that way. On former occasions, when this matter came up, I did not find him taking such a keen interest in it as he does now. With reference to the measure before us, relating to bills of exchange and promissory notes, I wish to know if the French code has been brought in harmony with the law of the Dominion on this subject? I know there is some difference between the law of Quebec and the laws of other Provinces.

Hon. Mr. ABBOTT. I am pleased to be able to say that, so far as the principles of the law are concerned, this Bill harmonizes the laws throughout the whole Dominion. There may be some slight difference in the Quebec law as to the exigencies for presentments and protests, but it is only in matters of detail, matters of procedure, and does not affect the principles of the law.

Hon. Mr. HOWLAN. I may say, in reply to my hon. friend from Charlottetown, that the only reason I postponed the motion of which I gave notice was in order that we might make more rapid progress with the business of the House. Several gentlemen expressed a wish to get home, and I thought that the motion might be allowed to stand until to-day. A similar anxiety is manifested to-day, and as nothing can be lost by postponing the motion, I am willing to let it stand over until after the holidays.

Hon. Mr. HAYTHORNE. I hope that the hon. gentleman who leads the House will, on the resumption of business here, feel himself in a position to give the House some information with regard to the state of negotiations between the British and the American Governments on the Behring Sea Question. It may be in the hon. gentleman's recollection that the subject was alluded to at the opening of the Session, and I think then he expressed the hope that he would be in a position to give further information before the House rose. I only hope that the hon. gentleman will be able to do so when we meet after the holidays.

The motion was agreed to.

The Senate adjourned at 4 o'clock.

IN COMMITTEE.

The House resumed in Committee of the Whole the consideration of Bill (6) "An Act relating to Bills of Exchange, Cheques and Promissory Notes."

(In the Committee.)

On the 32nd clause.

Hon. Mr. ABBOTT said: Sub-section 2 is changed in some degree but not materially. This is a modification of section 4 of the English Act. There is a form of endorsement which is common in the Province of Quebec and not unknown elsewhere in the Dominion. I am not satisfied that this clause provides for that endorsement. It is known as endorsement *pour aval*. It is true this clause has reference to the transfer of a bill, but I think that the amendment that I suggest could be made at the end of the clause.

Hon. Mr. POWER. This clause deals altogether with the transferring of bills.

Hon. Mr. ABBOTT. Although it says in the first portion of this clause, that it purports to deal with the negotiation of a bill, still the third and fourth sub-sections do not seem to deal exclusively with that subject, and we might with propriety treat this clause in a more comprehensive way.

Hon. Mr. DRUMMOND. I would venture to suggest that if a person is wrongly designated in a bill, and endorses it as therein stated, he should be compelled to attach his proper signature. Under such circumstances, a man should be held clearly responsible over his own proper signature, for the fact that he adopts deliberately an erroneous designation. I would therefore suggest to strike out the words "if he thinks fit," and that he be compelled to adopt the wrongful designation over his own proper signature.

Hon. Mr. ABBOTT. My hon. friend's suggestion is a very important one and should not be dismissed without due consideration. With the consent of the House, I will let the clause stand for the present.

Hon. Mr. SCOTT. The suggestion is a very good one.
The clause was allowed to stand.

On the 36th clause.

Hon. Mr. DRUMMOND said: It appears to me that the third sub-section is very vague and uncertain and that some definition should be given of what is a reasonable length of time.

Hon. Mr. ABBOTT. My hon. friend's objection to this has a certain degree of plausibility, but the same difficulty occurs in a great many places in the Bill, and already exists in the law. The question whether a bill, or note, or cheque, payable on demand is presented within a reasonable time has always been left to the appreciation of the court. There are cases where a bill has been held for nearly five years before being presented, and it has been decided that it was not withheld an unreasonable time. There are other cases in which a much shorter time has been held to be unreasonable. It all depends on the circumstances of the case. For instance, it is a common practice for a demand note to be given to a bank as collateral security for an account. Although it is made payable on demand, it is obviously not intended to be presented, but to remain in the hands of the bank until the persons whose names appear on it insist on something being done with it. In a case which went from St. Johns to the Privy Council a note which had been left in the hands of the St. Johns glass works for over four years, until the parties to it had become bankrupt, and was then presented, was held to be presented in sufficient time, because it had been presented in the hands of the bank as collateral security. It is therefore practically impossible to put into any Act what is a reasonable time within which a note payable on demand shall be presented, and it has to be left to the judgment of the court.

The clause was adopted.

On clause 38.

Hon. Mr. DRUMMOND said: It is well known in Canada that the maker of a note very often pays the wholesale house to whom it is given, and not the bank. The wording of the last clause of subsection (c) of this section would appear to open the door to the discharge of the promissor.

Hon. Mr. ABBOTT. The rights and powers of the holder of a bill are defined by this section. That is an incident to the character of bills of exchange and promissory notes. They are necessarily negotiable, and obtain a kind of sanctity in the hands of a third holder for value which is not accorded to any other form of payment. In the hands of a third holder, for value, even though the note was improperly negotiated by the original holder he can obtain value for it, leaving the man who gave it recourse against the party who improperly negotiated it.

Hon. Mr. SCOTT. That is, if the paper has matured, but this might be interpreted to apply to a note at any stage.

Hon. Mr. ABBOTT. Words are employed through this Bill to signify a note given to a third party for value.

Hon. Mr. DRUMMOND. It would not apply in the way I suggested.

Hon. Mr. ABBOTT. The holder must be paid.

The clause was adopted.

On clause 42.

Hon. Mr. ABBOTT said: There is a good deal of laxity as to what is the proper time for accepting a bill. There is no such universal custom established in the Dominion as would justify a person delaying acceptance of a bill of this kind without exposing himself to some risk. It was thought expedient, and it met with the approbation of a good many business men who were consulted about it, to fix the time as stated in this clause. That is, if it is not accepted on the day on which it is actually presented for acceptance, or the following day, then it must be protested.

Hon. Mr. SCOTT. I think it would be a mistake to alter the law in that particular. Bills are often sent forward for presentation, and the party has not had advice; he says, "call to-morrow or the day after to-morrow; I have not had my mail, and I will probably hear from the drawer in a couple of days." The bill is withheld accordingly. Under this clause the bank could not withhold it.

Hon. Mr. ABBOTT. Yes, for two days, the day of presentment and the next day.

Hon. Mr. SCOTT. My idea would be to allow more time. You cannot lay down an arbitrary rule that would apply in all cases.

Hon. Mr. McKAY. Bills are often presented before the invoice of the goods is received, and the banks allow a draft, in such a case, to remain in their possession until they know that the goods have arrived.

Hon. Mr. DRUMMOND. A longer time would be better; three days, at least, should be allowed.

The clause was allowed to stand.

On the 45th clause.

Hon. Mr. ABBOTT said: This is slightly different from the provision in the English Act. In sub-section (c) the words "or his representative" are added, and we leave out the words "at a reasonable hour on a business day."

Hon. Mr. POWER. Why leave out those words? They seem reasonable.

Hon. Mr. ABBOTT. There is no occasion to provide that it shall be on a business day, because there is another specific provision in

the Act which excludes the payment on a day which is not a business day. To fix what would be a reasonable hour was thought inadvisable, because outside of cities, where business hours are not always observed, it would not be considered at all improper to present a bill or note at the store of a storekeeper whose business is in full blast between seven and nine in the evening; but in a city it would probably be considered a rather extraordinary proceeding to present a bill at such an hour. It was thought perfectly safe to leave this to the practice that prevails among the people themselves who hold notes and have to pay them.

Hon. Mr. POWER. I do not feel quite clear about that. Suppose, as has happened in American cases, the presentment for payment is made at 11 o'clock in the evening at a man's house, and he does not happen to keep his money about the house, he cannot be expected to pay then.

Hon. Mr. PELLETIER. That would not be the proper place or time.

Hon. Mr. POWER. The proper time is left out. I doubt the wisdom of departing from the wording of the English law there.

Hon. Mr. ABBOTT. There is no provision in our law as it stands as to the time in which a bill should be presented, and it seems to me that we have worked under the law as it stands without any difficulty, and we do not wish to introduce any arbitrary change with respect to bills and notes that does not exist in any Province in our country now.

Hon. Mr. DICKEY. Still, we are doing it with regard to a great many points in this Bill.

Hon. Mr. ABBOTT. I do not think we are making any changes of importance, except where inconvenience and loss to the community have been experienced under the existing law. I have never had a case, and I have had a great deal of experience in my practice, in which a difficulty arose because of the time of presentment. There is a word omitted in sub-section 7 which I should like to put in. The word "acceptance" should follow the word "bill" in the first line, because if the place of payment is specified in the acceptance the bill ought to be presented at that place. Under the English law the word "bill" is construed to mean bill or acceptance, but in passing this Bill through the House of Commons some one took exception there to the word "bill" as possibly not including the acceptance, and the words "or acceptance" have been inserted in several places in the Bill, and as they are left out here, it seems to me it might create a doubt whether it meant acceptance or not, so I move to insert the words "or acceptance" in the first line of the second sub-section.

The amendment was agreed to.

On the 47th clause.

Hon. Mr. ABBOTT. In sub-section 2 of this section there is an omission. It is stated that a bill is dishonored by non-payment when it has been presented for payment and payment has been refused. Then the section goes on to define what the rights of the holder are. The word "acceptor" ought to be there, because the recourse is created against the acceptor, as well as the drawer and the endorser.

Hon. Mr. POWER. It is remarkable that so important a point as that should not have been dealt with by the English Act.

Hon. Mr. ABBOTT. We all know that as soon as the bill is dishonored the immediate right of recourse exists against the whole of the parties to the bill; still, as we are taking the trouble to make all the parties liable, we may as well name all of them.

The clause was agreed to.

On clause 49—notice of dishonor.

Hon. Mr. SCOTT. Is verbal notice sufficient now?

Hon. Mr. ABBOTT. Yes; I think it is a matter of proof in Quebec. I do not know how it is in Ontario.

Hon. Mr. SCOTT. I have no objection to the provision.

On sub-section 4.

Hon. Mr. SCOTT. I think it is introducing a very dangerous principle, to make a notice of protest or dishonor as being sufficiently given if it is addressed to any party to such bill at the place where the bill is dated.

Hon. Mr. RESSOR. I think it is usual to ask the post office address of every endorser.

Hon. Mr. ABBOTT. I think the deposit in any post office at any time during the day on which protest or presentment has been made ought not to be sufficient unless the postage is paid. I propose to add after the words "post office," in the seventeenth line, the words "with the postage paid thereon."

The amendment was agreed to.

Hon. Mr. ABBOTT. Then in sub-section 5 I would like to add in the 23rd line, after the word "posted," the words "as before provided."

The amendment was agreed to.

Hon. Mr. POWER. Paragraph (k) is different from the English law. The provision in the English Act is that notice must be given

as soon as the bill is dishonored, or as soon after as possible. This Bill provides that notice must be given not later than the next following judicial or business day.

Hon. Mr. SCOTT. I would like my hon. friend to consider if an amendment would not be in order at the 9th line of sub-section 4, with reference to qualifying the words "at his customary address or place of residence," by adding "or place where such residence is given."

Hon. Mr. ABBOTT. A note is payable to so-and-so in Montreal, and is endorsed by a half dozen people. The note is not paid when it falls due, and it goes with perhaps a hundred other notes to the notary to be protested. He sends notices to everybody on that bill to the place where the note is dated. He mails the notices in Montreal. If the endorsers live elsewhere it is only necessary for them to insert after their names the places to which notice shall be sent, and if they fail to do so it is their own fault if notice is sent only to the place where the note is dated.

Hon. Mr. SCOTT. The rule in Ontario is that the notary has not only that day but the whole of the next to post the notice, and during that time he has plenty of time to make enquiries. If a well known firm in Toronto is endorser on a bill, surely it is not asking too much of the notary to address the notice to the proper address. It is too much to say that a notary's clerk without making the slightest enquiry, may send a notice to the post office, at the place where the bill was dated, when he could easily find out the proper address.

Hon. Mr. ABBOTT. I do not pretend to know the Ontario law as well as my hon. friend does, but I may inform the hon. gentlemen that the general practice has been to mail the notice to the place at which the bill is dated, unless there be an indication of another address. It is all very well in a small place, or where there is a small business, to say that the notary shall make enquiry where the parties are, but where business is transacted on a large scale it is not easy to find out where each party is to be addressed, when there may be, perhaps, a hundred notes to be protested on the same day. It might give rise to an immense loss of security.

Hon. Mr. SCOTT. The whole Bill is conceived in the interest of the banks. It is quite apparent on the face of it.

Hon. Mr. DRUMMOND. Would it not be well to put in the word "endorser" after the word "bill," in the 9th line, sub-section 4?

Hon. Mr. ABBOTT. My hon. friend will perceive that the endorsement does not usually bear the name of the place where it is made,

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but the law expressly provides that if the endorser choose to name the place, then the notice must be sent to that place.

The clause was agreed to.

On clause 51.

Hon. Mr. DRUMMOND. Why should there be any distinction made between the Province of Quebec and other Provinces in the noting and protesting of an inland bill for non-acceptance and payment? I heard the opinion expressed within the last day or two, by a judge of the Province of Quebec, that it was injudicious and improper that there should be any distinction made. I submit that what is sufficient for one Province ought to be for the others.

Hon. Mr. POWER. I presume the secret of it is, that the notarial body is a very large and influential one in the Province of Quebec, and is also well represented in the House of Commons, and they have taken care that their fees shall not be taken away from them.

Hon. Mr. ABBOTT. The people of Quebec desire to have their law as it is, and it seems to me, as it is only a matter of procedure and not of law, it is desirable to keep it as it is. It is a process that their forefathers have been accustomed to for centuries; they wish to retain it, and I can see no objection to allowing them to do so.

Hon. M. PELLETIER. I must believe the hon. gentleman from Montreal when he says that a judge there expressed the opinion that there should be no difference in the law in the Province of Quebec and elsewhere; but I am sure that that judge does not represent the opinion of the Province or of the Bar of the Province. I remember an occasion when an attempt was made to have a change in the law of Quebec in this respect, and not only the members of the Bar, but the Bench also, were opposed to it.

Hon. Mr. KAULBACH. It is desirable to have the law uniform—not only the law but the procedure.

Hon. Mr. PELLETIER. Then make it as it is in Quebec, and we will have no objection to it.

Hon. Mr. BOLDUC. I have now heard for the first time that a judge has made objections to the practice in the Province of Quebec. I have, on many occasions, heard those gentlemen state that the commercial law of Quebec was the best that could be had anywhere. Our people are used to the law as it exists in the Province, and the slightest change would work very prejudicially against them.

Hon. Mr. REESOR. Will the hon. gentleman explain why notarial fees are more than twice as high in the Province of Quebec as they are in the Province of Ontario?

Hon. Mr. BOLDUC. That is a matter of detail. I do not think

they are double, but protests are not so numerous in our Province as in other Provinces, in consequence of the high notarial fees.

Hon. Mr. ABBOTT. My hon. friend will perceive that in Quebec the notarial profession is a learned profession by itself. In the other Provinces any one may be a notary; it is an incident generally to some other profession, and there is no reason for paying a high price for services which are almost mechanical. There is no reason for making the same charges in the other Provinces that prevail in the Province of Quebec.

Hon. Mr. SCOTT. Will my hon. friend explain why those words are introduced in clause 51—"but it shall not, except in the Province of Quebec, be necessary to note or protest any such bill in order to preserve the recourse against the drawer or endorser." How is the drawer or the endorser to be held unless he is notified?

Hon. Mr. ABBOTT. I put that question to those who drew the Bill, and the explanation is satisfactory to a certain extent. There is another clause in the Bill which provides that if an inland bill is dishonored notice must be given to the endorser and the drawer, but they do not insist on the formality of a protest. That is what is dispensed with in the practice in Ontario. Noting means notarial notation, which is completed by protest.

Hon. Mr. SCOTT. I think those words are simply confusing.

Hon. Mr. ABBOTT. I propose to add after the word "but," in the third line, "subject to the provisions of this Act with respect to notices of dishonor."

Hon. Mr. SCOTT. The clause means nothing, and should be struck out altogether.

Hon. Mr. ABBOTT. This clause deals with the protesting of bills, and it says that inland bills need not be protested. I understand that that is the law in England, and it makes the law uniform throughout the Provinces, except the Province of Quebec.

Hon. Mr. TEESSOR. The notice of dishonor would not entail the expense of a notarial protest.

Hon. Mr. ABBOTT. It would not. The amendments I propose to make to this clause are, after the word "but," in the third line, to add "subject to the provisions of this Act with respect to notice of dishonor."

Hon. Mr. POWER. That is clear from the provisions of the Act.

Hon. Mr. ABBOTT. My theory about legislation is that we should endeavor to put it in such a form that persons will not be liable to be misled by it. I must confess that I was misled by this for some time, and imagined that the Bill rendered it unnecessary to take any proceeding whatever with regard to inland bills of exchange, and one

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would naturally think so, reading the clause by itself. Therefore, as this amendment will make it quite clear, I think it will be better to adopt it.

The amendment was adopted.

Hon. Mr. SANFORD. Do I understand that the portion referring to the Province of Quebec is struck out?

Hon. Mr. ABBOTT. No. Why should my hon. friend take such an interest in the Province of Quebec?

Hon. Mr. SANFORD. I take a considerable interest in the Province of Quebec. If this exception is permitted, anyone whose business extends to the Province of Quebec would have to keep in his employ somebody specially to watch these matters in that Province. We are legislating for the Dominion, and I cannot see why a law which is applicable to the other Provinces should not be suitable for the Province of Quebec. I am not alone in taking this view of it. Many who are doing business in different sections of Canada feel as I do on this question. If we have one uniform law for all the Provinces we will avoid serious mistakes and embarrassing losses.

Hon. Mr. ABBOTT. I hope my hon. friend will move that inland bills be protested notarially in other Provinces as well as in Quebec. I think it is a better system. There is really no change in the principle of the law whatever. It is only a minor proceeding, and I do not see why we should not indulge the Province of Quebec in this matter. I should like to know whether I am expressing correctly the feelings of representatives from Quebec in saying that they desire to retain this mode of procedure in the event of a bill being dishonored. I think it is hard to deny it to them, inasmuch as it does not materially affect the other Provinces.

Hon. Mr. DRUMMOND. It is quite impossible to say that a special regulation affecting Quebec does not affect other parts of the Dominion. In this case the notarial protest should be dispensed with if it is found unnecessary elsewhere. If the suggestion of the hon. leader of the House, that the other parts of the Dominion should adopt this system of notarial protest, were to prevail, it seems to me that the tail would wag the dog. I am of opinion, not having any interest in notarial fees or legal expenses, that the parts of the clause referring specially to the Province of Quebec should be omitted.

Hon. Mr. KAULBACH. The object of this Bill is to harmonize the commercial law as far as possible throughout the Dominion. I do not see why Quebec could not come under the general law which applies to all the Dominion. Commercial law should prevail

uniformly in all the Provinces, and I do not think that Quebec would be much opposed to such legislation.

Hon. Mr. POWER. This requirement, that not only shall notice be given by a holder of the bill, but that he shall go to a notary and get him to make an official protest, is simply a sort of trap to the unwary creditor, and I can readily understand that a business man residing in another Province, to whom an inland bill becomes due from some one in the Province of Quebec, and payable in that Province, may very likely be misled, may act upon the law as it is in his own Province and find afterwards that, according to the law of the Province of Quebec, he should have employed a notary and had the bill protested. There is a very serious objection to maintaining this exception in the bill. I cannot, for the life of me, see how a debtor in the Province of Quebec should feel aggrieved, because he will be relieved, if this provision is stricken out, from the necessity of paying the notarial fees in addition to the amount of the bill. I quite agree that it will more or less diminish the emoluments of a very respectable class of the community in the Province of Quebec, but I do not know that we are just now bound to consider them, and the argument of the hon. gentleman that this has been the law in the Province of Quebec for a long time does not seem to have much force.

Hon. Mr. ABBOTT. Both of my hon. friends mistake the application of the theory they advance. They say that commercial law ought to be the same throughout the Dominion. The commercial law is made uniform by this Act; the obligations and remedies are the same throughout the whole of the Provinces; but in Quebec, if the parties are sued they are sued in a different manner from that which is recognized in the Province of Ontario. They are charged a smaller amount of costs considerably in the Province of Quebec than in Ontario when they are sued. There are various other particulars which follow the dishonor of a bill, but the obligations of a party are the same. The same argument which my hon. friends use for the purpose of having the notarial system of Quebec upset as regards promissory notes would apply to proceedings before the courts.

Hon. Mr. POWER. We have nothing to do with that.

Hon. Mr. ABBOTT. When my hon. friends object to this provision with regard to protesting they are not objecting to any difference in the commercial law, but to a difference in procedure. If it is the desire, as I really think it is the almost unanimous desire, of the Province of Quebec, to preserve the existing procedure intact, we do not concede anything by allowing them to do so. If a man in

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another Province does not wish to pay two or three shillings more for a protest in the Province of Quebec he need not deal with any-one in Quebec. I do not suggest that there should be a cessation of commerce between the Provinces, because it costs more for a protest in Quebec than elsewhere, but while we claim that the law shall be the same as far as is practicable throughout the Dominion, I do not think that a slight change in the procedure is worth quarreling about. Quebec desires to keep its system of protest, and I think it would be seriously aggrieved if we were to take it away from them.

Hon. Mr. KAULBACH. If it is only a slight change of procedure, the gentlemen of the notarial profession in Quebec will be more ready to yield to the general law of the Dominion. We are here to legislate for the whole Dominion; to make an exception will only lead to confusion.

Hon. Mr. ABBOTT. This is not a change in the law; it is keeping the law as it is.

Hon. Mr. KAULBACH. But the object of this Bill is to make this law uniform, as far as possible.

Hon. Mr. LOUGHEED. It appears to me that this exception is extending to the notarial profession of Quebec a consideration that is not shown to the professional men of the other Provinces. Consequently I think the same consideration should be extended to the members of the profession in the other Provinces.

Hon. Mr. KAULBACH. You would make the other Provinces subject to the law of Quebec?

Hon. Mr. LOUGHEED. I am strongly in favor of the suggestion thrown out by the leader of the House, that we should make the Quebec system uniform throughout the Dominion.

Hon. Mr. KAULBACH. Though I am a lawyer, I do not approve of that.

Hon. Mr. POWER. If there is a risk of destroying the Confederation we should not protest any further against this exception; but I think the leader of the House rather misrepresents the position taken by those who are opposed to his view. The opposition is not based chiefly on the fact that the fees of notaries in Quebec are higher than the fees of notaries elsewhere, but that certain things must be done in order that the holder of a note may recover on it in the Province of Quebec, and this difference makes a sort of trap for the holder.

Hon. Mr. SCOTT. I drew attention to the fact that it would be very much better if the law were uniform throughout the whole Dominion. I cannot, however, forget that the practice, in Ontario at all events, is that all inland bills are protested. The banks in-

variably protest—that is where 99 per cent. of the protests come from. If a man wants a bill protested he hands it in to a bank. Therefore I do not see very much after all in the exception in favor of Quebec. It only is important with respect to the amount of the fees charged.

Hon. Mr. ABBOTT. I do not understand sub-section (b.) It is as follows :—

“(b.) When a bill drawn, payable at the place of business or residence of some person other than the drawee, has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, or at a place in Canada situated not more than five miles therefrom, and no further presentment for payment to, or demand on, the drawee is necessary.”

There must be some omission in that: it ought to apply to the case which actually occurs, that is, that if a bill is dishonored by non-acceptance then it should be protested for non-acceptance, and if by non-payment, then it should be protested for non-payment. The process which a bill goes through is this: it is presented to the drawer, and if he refuses to accept, it is protested for non-acceptance, and thereupon the holder immediately has an action against everybody whose name appears upon the bill to recover the amount of it; but why should he be put to the trouble and expense of protesting it again after he has gone through the process which makes every one on the bill liable to the holder? There is no occasion for the expense of another protest.

Hon. Mr. HOWLAN. The ordinary course of business is to hold the bill until the time is up.

Hon. Mr. POIRIER. If a bill is presented and not accepted, it then and there becomes due—it has matured, and therefore it can be protested for non-payment.

Hon. Mr. ABBOTT. It can, but why?

Hon. Mr. POWER. I think a little more consideration still is due to this matter. Inasmuch as we are dealing with inland bills, if a bill is not paid then it must be protested at the place where it is expressly payable. I think perhaps the better way would be to let the clause stand over for further consideration. The English Act was drawn with great care, and we should be slow to depart from its terms.

Hon. Mr. ABBOTT. I do not understand why there should be any difficulty about adopting the proposition which I have made. Let us see how the parties all stand. A bill is drawn by Brown payable in Montreal. It is presented to this person in Kingston, say, and he refuses acceptance. It is protested or not protested, but in either case notice of dishonor must be given to every party on that

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day or the next day, or all recourse against the parties is lost. Then the next day everybody who is a party to the bill knows that it is not accepted, that it is dishonored, and that a right of action has accrued to the person who holds it to sue them all, which he can do without further notice or demand, and it is their business then to pay or not pay it. If they do not pay it they subject themselves to an action. Since the rights of all parties are complete, since the holder has right of action against everybody concerned, since everybody is aware that the bill has been dishonored, why should we force the holder to go through the further process of protesting the drawer and endorser, or anybody else for non-payment?

Hon. MR. SCOTT. He is not bound to do it, but if he does it, then it must be at the place where it is payable.

Hon. MR. ABBOTT. It may have been necessary to put such a clause in the English Act years ago, when it was passed. It may have been necessary, at that time, to hold the bill until it became due before it could be sued upon. That was the opinion when I came to the bar in Quebec, that you had to hold a bill until it became due, but that idea is exploded. If a bill is protested for non-acceptance a right of action accrues to the holder. The suggestion that I make is to insert the words "or non-payment" after "non-acceptance."

Hon. MR. DRUMMOND. I would like to hear an explanation of the provisions of sub-section 6, that a bill must be protested at the place where it is dishonored, or at some other place in Canada situate within five miles of the place of presentment and dishonor of such bill.

Hon. MR. ABBOTT. It must be put of record and made an official act within a certain distance of the place. That is the reason that has been given to me in answer to that enquiry.

Hon. MR. DRUMMOND. Could it not be made available to cause a great deal of inconvenience to a merchant? For instance, the holder might actually prefer to go five miles from the place of presentment to protest it, in order to put the parties to inconvenience.

Hon. MR. POWER. I imagine that the real object of it is to accommodate country merchants, where notaries are not to be found, perhaps, in the immediate vicinity.

Hon. MR. ABBOTT. The protest consists in the filling up of a notarial form, and there can be no injury to any man in protesting a bill five miles from the place of its presentment, except to the man who gets it done if he goes five miles outside of the city to get a notary to do it. I think the objections which have been made to this clause may be met by inserting after the word "payable," in

the 44th line, the words "or where it requires to be presented for acceptance, as the case may be." That will compel the protest, whether for acceptance or payment, to be made within a reasonable distance of the place where the Bill is to be presented for acceptance.

Hon. Mr. POWER. Would it not be better to put it in this way—that it must be protested for non-acceptance and non-payment respectively.

Hon. Mr. ABBOTT. It would only lengthen the clause without making it more clear. It must be understood that it is either for non-payment or non-acceptance.

Hon. Mr. POWER. Then the better way would be to put the non-acceptance first.

Hon. Mr. ABBOTT. Perhaps it would be better, though virtually it amounts to the same thing. I shall alter the order of the wording on the hon. gentleman's suggestion.

The amendment was agreed to.

On clause 52, sub-section 2.

Hon. Mr. ABBOTT. I am going to ask the committee to destroy the distinction to some extent between what is called a qualified acceptance and a general acceptance. I believe it is the law in some parts of the Dominion that an acceptor may accompany his acceptance by a statement that the bill is payable at a certain place.

Hon. Mr. SCOTT. That is an acceptance generally.

Hon. Mr. ABBOTT. Yes; that is an acceptance generally, and it is so defined in this Bill; but, if he adds the word "only," or some other equivalent phrase, then it is a qualified acceptance. If a bill is drawn on him, payable at the Bank of Montreal, it is a general acceptance, and the holder is bound to accept that form of acceptance, and every party to the bill remains bound on it; but if the acceptor adds the words "only" or "elsewhere," it is a qualified acceptance, and the holder cannot take it; if he does take it the endorers are discharged. That seems to me an absolute absurdity, that when a man says "I will pay this bill at the Bank of Montreal" the holder of the bill is bound to take that, and he does not discharge the drawer or endorers, but if he adds the word "only" the endorers are not held. By these two clauses, if you say a bill is payable at the Bank of Montreal you need not present it there, but the acceptor remains liable without any presentation; but if it is payable at the Bank of Montreal only and not elsewhere, then you can present it there, not necessarily on the day it matures, but when you like. I propose to amend the Bill to provide that if the acceptor names a place of payment in the bill it must be presented

there for payment. Under this system, if a man in his acceptance says where he will pay the bill it has got to be presented there, but the non-presentation does not relieve him, nor does it relieve anybody else as endorsers; but if the holder chooses to sue him without presenting it where he promised to present it, then he runs the risk of paying the costs. That seems to me to be absolutely just, simple, and convenient in all respects. If the holder puts the acceptor to undue cost by suing him at one place when provision is made for payment at another place, he sues at his own risk, and the costs are in the discretion of the court.

Hon. Mr. SCOTT. Section 52 only relates to the person that is ultimately liable on the bill.

Hon. R. KAULBACH. In Nova Scotia the endorser of a bill is not relieved from his responsibility by the acceptor saying that he will pay it at his own office. It does not relieve either the drawer or endorser; but if he says "payable at my office and not elsewhere," then it is taken at the party's risk that the endorser may be relieved. I know of no case in our Province in which the acceptor could be sued unless the bill is presented to him for payment.

The clause was agreed to as amended.

On clause 60.

Hon. R. DUMMOND. Clause 60 in the Bill as originally drawn is entirely different from clause 60 now before us, and it created a great deal of excitement amongst bankers. That clause was struck out in the Commons, though it existed in the English law, upon which this Bill has been modelled. It provided:

"When a bill payable to order on demand is drawn on a bank, and the bank on which it is drawn pays the bill in good faith, and in the ordinary course of business, it is not incumbent on the bank to show that the endorsement of the payee or any subsequent endorsement was made by or under the authority of the person whose endorsement it purports to be, and the bank is deemed to have paid the bill in due course, although such endorsement has been forged or made without authority."

As far as the mercantile community is concerned, the Montreal Board of Trade objected to this clause, but I have received a great many communications from bankers expressing strongly their objection to this clause being struck out, and claiming that as the Bill is a copy, to a large extent, of the English law, there is no valid reason for departing from English practice and striking out this clause. They principally dwelt on the inconvenience to which it subjects a large portion of the public, because if the bank is liable

for any endorsement, whether they are familiar with it or not, of course the identity of the party to whom the bill is payable is a necessity for the bank to ascertain. I hold here an immense number of opinions given by agents of banks and others throughout the country, that if this clause is struck out and the bank is held responsible for signatures and endorsements for which it has no sufficient means of information or identification, that they will be compelled, in self-defence, to put a great many people to inconvenience in respect to it. Under these circumstances, I think I ought to move that clause 60, as it appeared in the original bill, should be reinstated in this bill.

HON. ^{DR.} KAULBACH. I really do not see why the bank should not be responsible. If a bill is forged, I think it is the duty of the bank to take care that they do not pay it. They generally require a person who presents a cheque at a bank to find some one to identify him. The banks are well paid for all this trouble, and should be careful of what they are about. If you relieve the banks of responsibility they will take any paper that may be presented. It would open up a multiplicity of means of defrauding the public. The bank must take care of itself and know the person to whom it pays money.

HON. ^{R.} ABBOTT. There are two illustrations in the English Act quoted which seems to me to suffice as to the argument against this clause. These illustrations are as follows:

"1. A cheque is drawn payable to C. or order. It is stolen, and C.'s endorsement is forged by the thief. The bankers on whom it is drawn pay it. They can debit the drawer's account with the amount of the cheque.

"2. A cheque is drawn payable to C.'s order, and handed to an agent of C.'s in payment of a debt due to C. The agent, who has no authority to endorse cheques, endorses it "per proc." for C., obtains payment and keeps the money. The loss falls on C. He has no remedy against the drawer or the bankers."

He has no remedy. That is the state of things which this clause would produce. The only argument against it, and it is an argument that has some weight, is that it is a serious inconvenience to the banks to be made responsible for the genuineness of the endorsement on a bill presented to them for payment. The endorsement on that bill is one that the drawer does not see at all. He requests the bank to pay out of his money to John Smith five hundred pounds; the bank pays it to John Jones in reality. How can it be said that they are fulfilling their obligation to him when they take his money and give it to another man? If they not know the endorsement, of course it is their interest to verify it in some way, and my experience is that they always do so. I have had a bank

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account for forty years, and occasionally a person receiving a cheque from me has come back to me to be identified. I write my name on the back of the cheque and that suffices. To allow this other clause to become law would open the door for frauds of every description. A cheque could not be left where an office boy or anybody else could get at it. You could not send a cheque by post to pay an account—you could not give a cheque without getting a receipt for it. You would run the chance of any beggar on the street picking up a cheque and putting his name on it, and the banks paying it without hesitation. The money would be paid away contrary to the instructions of the owner, and without any opportunity for the person who owned the money to protect his interests. I am pulled both ways in this matter. I have something to do with the banks myself, but I cannot recognize the justice of this proposition, and I think the House was right in striking it from the Bill.

Hon. Mr. DRUMMOND. Is it not peculiar that in this particular the House should depart from the English Act, which has been followed in every other feature? That is an anomaly which requires some explanation. I might trouble the House with a short paragraph from a communication which I have received. My informant says:

"From experience I am certain there is no part of our dealings with the public that causes so much exasperation and so much positive inconvenience to the public as the fact that banks are responsible for the endorsements upon cheques. In order to protect ourselves, we must see that the party who presents the cheque, or by whom it purports to be endorsed, is the real payee, and in order to do this we are constantly obliged to refuse payment until the public, very often at great inconvenience, are compelled to bring parties to the bank, not only whom they know but whom we know, to identify them.

"I imagine that if a statement of the kind were sought it would be found that not one case in 5,000 is a cheque presented but by the party actually entitled to receive the money; yet it is quite likely that of that number we would call upon 250 to be properly identified to us.

"This is a serious inconvenience when men are in a hurry and especially when they are strangers.

"This is the disadvantage of it to the public. To the bank it is serious in another way.

"The liability of banks for endorsements has been abused, inasmuch as many men now use bank cheques as receipts for money, knowing well that on the bank is thrown the responsibility of seeing that the money is actually paid to the proper person. They take little heed, therefore, to examine their pass-books and cheques when surrendered to them, to satisfy themselves as to the genuineness of the endorsements, and owing to this, after a lapse of many years, a bank might be called upon to refund money to a party who, if he had taken care to satisfy himself at the proper time, would have detected the fraud.

"We take every possible care to surrender customers their cheques and get confirmation from them that their account is correct in our books, but it has been held that this is no protection to the banks against the fraud of a forged endorsement, and certainly we should have protection of some kind."

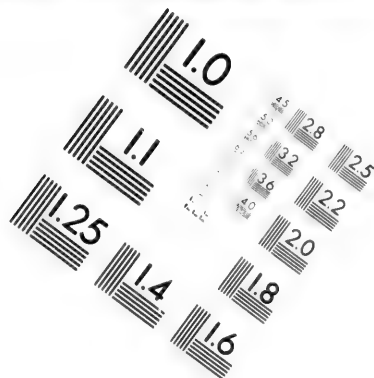
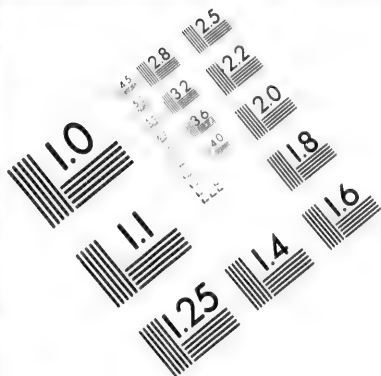
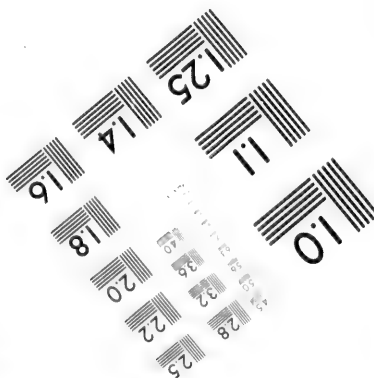
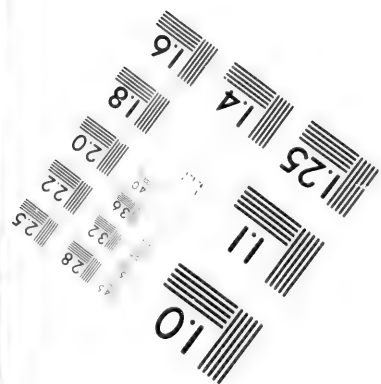
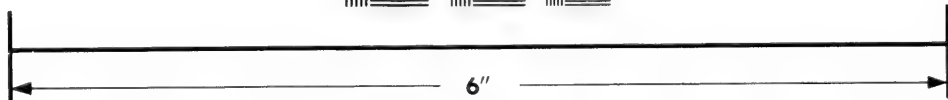
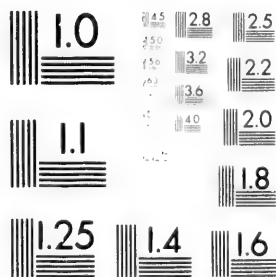


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Now I can quite see, on the face of it, that it is a great convenience to the public that this clause should be struck out, but it is the practice of banks, in judging of the proper endorsation on cheques especially, to leave it to a junior clerk, to whom they pay two or three hundred dollars a year, and, as a matter of fact, if you make your cheques payable to a certain firm you throw the onus of proving the payment on the banks, you being the only party knowing them to be entitled to it. If it be the fact that in drafting this Bill clause 60 was for good reason inserted, I cannot see that it can be rejected summarily now.

Hon. Mr. POWER. In connection with this clause, the matter was very fully discussed in the House of Commons, where the feeling was overwhelmingly against the retention of the draft clause which the hon. gentleman now desires to have inserted in the Bill, and although it is perfectly true that we should, as a rule, follow as nearly as we can the English law, still, if the English law is in itself not applicable to our condition, I do not think we are bound to adopt it. If hon. gentlemen will look at clause 24 of this Bill they will find that the clause which the hon. gentleman wishes to insert is an exception to the general principle governing the Bill. The general rule is, that the holder is responsible, and I do not see why an exception should be made in favor of the banks. They have facilities and skill which enable them to protect themselves better than others could.

Hon. Mr. OGILVIE. If that clause were adopted, it would be unsafe to send cheques payable to order anywhere, as is now done all over the country; because if a letter were to get into other hands, and the endorsation of the cheque were forged, the fraud could not be discovered, because the payment would be in another city altogether.

The amendment was declared lost.

Hon. Mr. DRUMMOND. I think it ought to be clearly understood that the bank has a legal right—I have heard it questioned—to take precautions to satisfy itself as to the validity of signatures and endorsements. If the banks cannot exercise due and proper care, and are responsible, as this Bill makes them, I think it is necessary to insert in the Bill something giving the banks the absolute right to require indentification in every case, and perhaps some of the lawyers in the House will say whether that is requisite or not. If there is not a clear opinion on that point I shall feel it necessary to divide the committee on a clause conferring on the bank the power of absolutely identifying the signatures and a certain limit of responsibility—a period beyond which the responsibility does not extend.

The clause was adopted.

IN COMMITTEE.

The House resumed, in Committee of the Whole, consideration of Bill (6) "An Act relating to Bills of Exchange, Cheques and Promissory Notes."

(In the Committee.)

Clause 79 was allowed to stand.

On clause 83.

Hon. Mr. SCOTT. This is a peculiar clause. A man who makes a note to a devisee, for instance, who puts it in his box and dies without presenting it. How is it under that clause? Is the estate bound?

Hon. Mr. ABBOTT. It is not an obligation at all until it is delivered to somebody; but he may devise it by will if he choose. I think it is necessary under the present system to deliver to make it obligatory.

Hon. Mr. DICKEY. A question may arise hereafter as to whether it is not necessary to prove delivery in order to make the note good, and that might be a very embarrassing proceeding.

Hon. Mr. ABBOTT. No doubt, my hon. friend having drawn and maintained a thousand actions on promissory notes, always alleges delivery, and possession of the note has always been held as being *prima facie* evidence of delivery.

The clause was agreed to.

On clause 86.

Hon. Mr. ABBOTT. This clause is inconsistent with the corresponding clause in the law relating to the acceptance of bills.

Hon. Mr. SCOTT. It is a total innovation of the law of Ontario as it now stands.

Hon. Mr. ABBOTT. I think it is an innovation of the law of the Dominion. The first clause deals with the maker, the second clause deals with the endorser, and in order to hold the endorser you must present the note for payment.

Hon. Mr. SCOTT. If it has to be presented it involves proof, and if an action was brought, evidence has to be given that the note has been presented.

Hon. Mr. ABBOTT. That only applies to a note made payable at a particular place.

Hon. Mr. SCOTT. As a general rule, notes are made payable at a particular place, but this clause involves proof that the holder ought

not to be called upon to make in court. It involves a notarial proof, otherwise you will have at trial to call a witness to swear that the note was presented at the particular place.

Hon. Mr. ABBOTT. Business men usually make provision at their bankers for the payment of their notes. A business man may be out of town, but leaves money at a particular bank where he promised to pay the note. Surely it is no obligation on the holder of a note to make him present it at the place where the maker promised to pay it.

Hon. Mr. POWER. It seems to me that the argument of the leader of the House is a perfectly satisfactory one. It is limited to the case of where the place of payment is named in the body of the note.

The clause was allowed to stand.

On clause 88.

Hon. Mr. DRUMMOND. This brings up the question of Quebec again.

Hon. Mr. ABBOTT. There are two points in this clause which I think require our consideration. My attention was called in the early part of the discussion of this Bill to the obligation which is imposed on the person who gives a bill for a patent right to stamp something upon it or write something across it, and the question was raised whether that would apply to a note, and I am under the impression that it would not. The rule would, but the penalty or provision for punishing the maker of the bill would not apply to the maker of a note, and I propose to alter the original clause by adding the words "promissory note" to that.

Hon. Mr. SCOTT. I had another amendment which I think ought to be added at the end of that clause, where the party offending commits a misdemeanor and is liable to a penalty. I intended to add this amendment: "And such a person so offending shall have no claim against the acceptor or maker." It is not right that a man who commits an offence against the law of the country as a misdemeanor should be able to take advantage of it.

Hon. Mr. ABBOTT. I think what my hon. friend says is reasonable. I will look into it. Then I do not understand why it is under this clause that a foreign note being dishonored should not be protested, more especially in respect of the endorsers. I do not see how we are to get at the endorsers if we do not protest the note, and I would move to strike out the words "except in the Province of Quebec," and add these words: "except for the preservation of the liability of endorsers."

Hon. Mr. POWER. Why should you make it more difficult to recover if the endorsers have notice?

Hon. Mr. SCOTT. Because it is proof. It carries with it its own proof.

Hon. Mr. POWER. If the creditor or holder of the note does not think it necessary to get that proof, why should you say it shall be necessary? It is not the English law. If the holder runs the risk of not being able to prove his claim, why should we go further?

The amendment was agreed to.

Hon. Mr. McCLELAN, from the committee, reported that they had made some progress, and asked leave to sit again, on Thursday next.

The report was received.

REPORTED FROM COMMITTEE.

The House resumed, in Committee of the Whole, consideration of Bill (6) "An Act relating to Bills of Exchange, Cheques and Promissory notes."

(In the Committee.)

Hon. Mr. ABBOTT said: As the House is aware, this Bill has been gone through in Committee of the Whole, but while doing so certain clauses were allowed to stand, in order that their purport might be considered and any amendments that might be thought necessary might be made. There are six clauses altogether that were allowed to stand, and in addition to these there are one or two suggestions which I propose to make for the reconsideration of some of the other clauses, namely as to minor points; but it has proved the advantage of having a little time to consider a bill of this importance and complication, and I propose to ask the House to indulge me by re-considering one or two clauses, besides placing in a proper form these clauses which we have reserved. The first suggestion that I have to make is to insert at the end of the second clause of the Bill a little further definition. There seems to be a question whether the expression "defence" would comprise a counter claim by way of defence. The Minister of Justice called my attention to it, and expressed his desire that we might put in some definition. I, therefore, move that another clause be inserted in the second section, which will be clause (k)—"the expression 'defence' includes counter claims."

Hon. Mr. DICKEY. Does that mean set off?

Hon. Mr. ABBOTT. Yes; that is the understanding. The amendment was adopted.

On clause 9.

Hon. Mr. ABBOTT said: A discussion arose as to whether a note payable in instalments fell due if any one of those instalments remained unpaid. I dare say that the hon. gentlemen who raised this point have looked at it since, and so have I, and found that it is an exceptional case. A bill is a bill of exchange, although it may contain a clause for payment by instalments, but the person who makes the note may make it payable in instalments, and provide that it shall not fall due on non-payment of an instalment, or that it may fall due for non-payment; so it is only a privilege left to the maker of the note that he can put in the condition if he chooses, that the note may become due. So I presume the clause may pass.

The clause was adopted.

Hon. Mr. POWER. I would suggest an amendment to clause 13, to which I understand the hon. gentleman has no objection. It is simply to add at the end of the clause the words "or other non-judicial day."

The amendment was agreed to.

On clause 19.

Hon. Mr. ABBOTT said: This defines a qualified acceptance. Now we understand, in the general way, what a qualified acceptance is, but there is a special definition in this clause which makes an acceptance to pay at a particular place a qualified acceptance if it says "and not otherwise or elsewhere," but not a qualified acceptance if it omits those sacramental words. On examining the Bill we find there is no object in it—that it accomplishes no purpose: in both cases the Bill must be presented where it is made payable by the acceptance. There is no clause in the Act which imposes any additional penalty or liability on the party who accepts the bill in that form than if he accepts it in the simple form stating where he wants to pay it. Going over the Bill with the Minister of Justice and two or three legal gentlemen who have come from different parts of the Dominion to assist in perfecting this Bill, taking an interest in it, we have all satisfied ourselves that there is no possible use in this distinction. I propose to add these words: "But an acceptance to pay at a particular specified place is not conditional or qualified." That really attains all the objects that are desired to be attained by sub-section (c) without creating a complication which was incomprehensible to me and to a great many others who saw it

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and which was found to be of no use when we came to under-stand it. I have had letters from various parties, including the Bank of Montreal, begging that this distinction be not recognized in the Bill, as it is unknown in Lower Canada and not much practiced anywhere else.

Hon. Mr. KAULBACH. I think that the amendment is a very proper one, but there certainly have been some decisions in our courts in the lower Provinces that the words, "Not otherwise or elsewhere," have relieved the drawer or endorser.

Hon. Mr. ABBOTT. We escape that now.

The amendment was agreed to.

Hon. Mr. ABBOTT moved that sub-section (c) be struck out of the Bill.

The motion was agreed to, and the clause, as amended, was adopted.

Hon. Mr. ABBOTT. The House will remember that in the Bill as drafted there was a clause which relieved banks of responsibility if they paid a cheque payable to order, the endorsement of which was forged—that is to say, the forgery of an endorser's name on a cheque was at the risk of the maker of the cheque, and not the bank. That is not our law in Canada. It has been the law in England for some time, but it appeared so objectionable in the other House that it was struck out of the Bill there, and in this House no disposition has been shown to replace it. But there is a hardship connected with it: the bank might remain under the obligation to pay back the money represented by the forged cheque till the period elapsed within which a remedy might be had, which is six years in Ontario and five years in other parts of the Dominion. That would be a gross injustice, because the person who draws the cheque ought to know before that period of time occurs whether the cheque was properly paid or not, and they ought to let the bank know, and not leave the bank without the information so long that the people concerned might have died, or left the country, or become insolvent, and the bank entirely lose the amount. It has been suggested by the hon. gentleman from Montreal (Mr. Drummond), who, I am sorry to observe, is not here to-day, that it would be advantageous and just that there should be some limitation to the time during which a man might call on a bank to replace money paid on cheque with a forged endorsement. We have all felt the force of that, and have come to the conclusion to propose to the House to make a limitation in clause 24. We propose to append a sub-section the effect of which is that the bank shall not be liable for paying a cheque on which there is a forged endorsement, to repay the money to the drawer of the cheque unless within a year from the time he receives notice that the cheque

was paid he gives the bank notice in writing that the endorsement was forged, and we propose to put the notice either in the reception of his bank-book or of his cheques, or any other form of notice which may be adopted; but those are the two forms in which the drawer would be certain to receive notice. To leave it longer than one year I think would be a gross injustice to the bank. The bank should receive notice, so as to be able to take steps to recover the money from the parties who have improperly obtained it. There is one proviso to the clause, and we propose to add another to apply to the case of a man who ought to have received the cheque, or whose name was forged. In case a cheque should have been given to him by the drawer in payment of a debt, of course he ought not to be deprived of his remedy for the recovery of the debt in case of his not getting the cheque; but, at the same time, he cannot be considered to be free from blame for having let the cheque go out of his possession, or not having taken care of it, and he has a right, within the same period, to recover the amount of the cheque.

Hon. Mr. DEBOUCHERVILLE. But if he is prevented by sickness from getting it, or if he has not received notice?

Hon. Mr. ABBOTT. He must have received notice.

Hon. Mr. DEBOUCHERVILLE. But suppose he was very sick for months?

Hon. Mr. ABBOTT. The banks desired to have it a month; then it was proposed to have it six months, but we fixed it at twelve months, because we considered that that was long enough.

The motion was agreed to.

Hon. Mr. ABBOTT. Sub-section 4 of section 30 is the one in which I think it is that a patent note—a note given for a patent—shall have the consideration written upon the face of it, and the man who issues the note given for a patent on which these words do not appear is liable to a penalty. He is guilty of a misdemeanor under the term of this law. The clause as drawn only applies to a bill. There is a general clause in the latter end of the Act which says that the provisions with respect to bills shall apply to notes where the circumstances are analogous, but I had my doubts whether we could carry or try an offence punishable by fine or imprisonment for it by any such incidental legislation as that, and so had some hon. gentlemen opposite when the question came up. So I propose to add after the word "Bill" in this section the word "note," and this word "note" is characterized all through it afterwards as an instrument, and therefore that will certainly apply.

Hon. Mr. POWER. I quite concur in what the hon. gentleman says, but it occurs to me that inasmuch as the early part of this Bill

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deals altogether with bills, one would not naturally look in this part of the Bill after it becomes law for any revision with respect to promissory notes.

Hon. Mr. ABBOTT. Yes; there is a clause which refers you, when you come to "promissory notes," to "bills" for the law with respect to promissory notes.

Hon. Mr. POWER. The instruments which are given for this purpose are all notes.

Hon. Mr. ABBOTT. One of the difficulties is this: A man who sells a patent right and gets a note for it may come back after a few days and say: "I have made such arrangements that I can give you three months more if you like to renew that bill for six months, and he gets a renewal of the bill on which he does not write the consideration. This point was raised on the argument that although the man who takes the bill and passes it is liable to a penalty when he passes it, he can sue on it, and act upon it in any way he likes up to that time. Of course, it can be answered that if he sues upon it himself the maker has a defence, but then the maker may have difficulty in proving his defence—that it was given originally for a patent right. Therefore, my hon. friend from Ottawa suggested, and I think some other hon. gentleman spoke in the same sense, that we should make the bill void if these words are not written upon it. Certainly, if we choose to create a penalty which is to be paid by the person who procures the note we might, with equal propriety, say that he shall not recover on it. So I propose to add to sub-section 4 these words: "And without such words thereon such instrument and any renewal thereof shall be void, except in the hands of the holder in due course without notice of the consideration."

I had the pleasure of conferring with my hon. friend from Ottawa on this amendment and he concurred in it.

The amendment was agreed to.

Hon. Mr. ABBOTT. Section 42 is a section which was not reserved, but which was the subject of discussion. The point in that section was, whether we should require that a bill should be duly presented for acceptance on the day stated for payment or on the next following day, as enacted in this clause. With reference to that, I may say that the English Act provides that a bill must be presented within a reasonable time, leaving the time to the appreciation of the judge of the court, if it should go before a court. That was the way in which this Bill was drafted, and it came in that form before the other House, but there was such a strong opposition manifested to it there that the Minister felt disposed to make the amendment which places it in its

present shape. Hon. gentlemen here the other day thought it was too short a period of time, and although I would be quite satisfied to pass the Bill in the form in which it was originally introduced, and as far as my own information goes I would prefer that to any specific limitation, yet I do not know if we extend this time a little but we shall meet all the difficulties of the case. As was suggested the other day, I proposed to the House to make it within two days of presentment, so that will give three days in all for procuring the acceptance. I will therefore move to strike out the words "on the next following day, not being a legal holiday or non-juridical day," and insert the words "within two days thereof."

Hon. Mr. McKAY. Although the extra day is quite an improvement, I very much prefer the English Act, for there are occasions, and a great many of them, where the drafts are made before the invoices are received, and it is almost impossible to accept them without knowing whether the amounts are correct or not.

Hon. Mr. ABBOTT. There is this to be said in reference to it: Inland bills do not require to be protested except in Quebec. All that needs to be done is to send a notice that the bill has not been accepted, and the bank can do that without causing any expense, and can hold the bill as long as it chooses, to get the acceptance, and no harm is done if, within a few days, the consignment comes and the bill is accepted.

Hon. Mr. DICKEY. What would be the effect supposing the second day is a non-juridical day?

Hon. Mr. ABBOTT. The law provides that a non-juridical day does not count.

The amendment was agreed to.

Hon. Mr. ABBOTT. In section 51 in the law as we have it now, and until this Bill becomes law, there is no provision that a clerk or agent of a bank shall not act as a notary in protesting of a bill or note payable at the bank in which he is employed. It is perfectly obvious that it would never do to allow a bank to have its own clerks act as notaries, to regulate any difficulties which may occur. I will therefore move an amendment as clause (a) to come in after section 51, as follows:—

"No clerk, teller or agent of any bank shall act as a notary in the protesting of any bill or note payable at the bank or at any of the branches of the bank in which he is employed."

The amendment was agreed to.

Hon. Mr. ABBOTT. In section 56 I propose to add the words "and is subject to all the provisions of this Act respecting endorsers," at the end of the clause. This is to get over a difficulty which has occurred in Lower Canada and, I suppose, elsewhere, as to the neces-

sity for giving notice to an endorser on a note *pour aval*, the notice that we are bound to give to an ordinary endorser.

The amendment was agreed to.

Hon. Mr. ABBOTT. In clause 79 my attention has been called by a colleague in Montreal to a point which is important in this Bill. There is a clause in section 71 which deals with the conflict of laws where bills are made and fall due in different countries. There is no provision in our law which gives any force or effect to an official instrument connected with a protest with a bill or note in a foreign country, and it is quite obvious that there ought to be. Under the comity of nations perhaps our officials would take notice of a protest of a note or bill in Germany or France or other foreign countries, but we have all thought it better to clear it up by stating distinctly in the Act that an official notarial copy of protest in a foreign country, or the notice given and the notarial certificate of service, shall be *primâ facie* evidence that the note has been protested and the notice given in the manner in which these instruments indicate, and I have prepared an amendment in this form:—

Page 25, line 26.—After “payable” insert: “(f) If a bill or note presented for acceptance and payable out of Canada is protested for non-acceptance or non-payment, a notarial copy of the protest, and of the notice of dishonor, and a notarial certificate of the service of such notice, shall be received in all courts as *primâ facie* evidence of such protest, notice and service.”

The amendment was agreed to.

Hon. Mr. ABBOTT. Clauses 78 and 79 were required to stand, because it was thought they bore some analogy to the clause respecting forged endorsements, which was struck out, and which this House disapproves of. Clause 78 can scarcely be said to present such analogy. Clause 79 does, to some extent, bear a very faint analogy; but I would call the attention of the House to this fact, that these two clauses are a part of the system which is introduced from England, and which has never been used, and I doubt for my part if it ever will be used, of cross-cheques. We know nothing of that in Canada now. It is used to some extent in England, and the provisions with respect to these cross-cheques are copied in section 73 word for word from the English law on that subject. No one need use a cross-cheque unless he likes, and if he does we think it would be better that he should use it in conformity with the English system—that we should not make any change now. We do not know much about the practice ourselves. We have had no experience of it in this country, and we think it better to leave it as it has been in England for many years, and approved of there, and passed in recent Statutes as the law there, and if any diffi-

culty or dispute arises in the use of this system of cross-cheques we shall have the jurisprudence of England to refer to, to give us the proper construction, and we have thought it better to ask the committee to pass the clauses as they stand.

The clauses were adopted.

Hon. Mr. ABBOTT. Section 86 I thought objectionable, because it imposed upon the holder of a promissory note no more stringent obligations with reference to the place of payment than the maker, and it gave the maker of the promissory note a greater measure of relief in the event of non-presentation than was permitted in other portions of the Act. The whole theory of this Bill is that bills and notes are treated on exactly the same principle, and the parties to which, who are analogous to each other, come under the same rules. The bill must be presented at the place of payment, but it does not release the acceptor if it is not presented at the place of payment. It may be presented at any time, or it may not be presented at all, except to hold the endorsers; but with regard to the acceptor, he being primarily liable, the law does not render it imperative that the presentation shall be made at the place mentioned in the body of the note, but the holder takes the precaution to present it, because he is placed in this position, that if he does not present it there he runs the risk of being told there were funds there on that day to pay it, and he must pay the cost or sue, before he can collect it. Now, I propose to strike out the words "before action, in order to render the maker liable in any other case," and insert these words:

"But the maker is not discharged by the omission to present the note for payment on the day that it matures; but if any suit or action is instituted thereon against him before presentation, the costs thereof shall be in the discretion of the court, if no place of payment is specified in the body of the note."

Hon. Mr. KAULBACH. Is that not a large discretion allowed to the court? If the note is not presented why not make the party who sues liable for the costs?

Hon. Mr. ABBOTT. Because the party who made the note may not have provided any money at the place of presentment, and that relieves the holder from the necessity of presenting there. The judge will only exercise the discretion in cases where the money is provided at the place of payment.

Hon. Mr. KAULBACH. Supposing it is made payable at the maker's house?

Hon. Mr. ABBOTT. That is the same as making it payable by himself.

Hon. Mr. SCOTT. I think 65 or 70 per cent. of all the notes that are made in this Province are not paid in at the place of present-

ment. They are made payable at a certain bank, but the note is taken, knowing that the maker does not keep an account at the bank. Supposing by any possible chance the money was placed in the bank the day of payment, and withdrawn the day afterwards, and the holder calls at the maker's office the next day and presents the note, the maker of the note is perfectly independent, because the money had been provided the previous day at the bank for payment and if the note was not paid on that day it was the holder's fault.

Hon. Mr. ABBOTT. The Bill provides that the note can be presented at any time before action. The only thing the holder requires to save himself from paying the costs is to present the note before he sues. There is one clause here which none of us see the use of. It is the 96th clause: we do not know what the bearing of it would be. It is confusing, because the rules of the common law in England are not the rules that we have been in the habit of applying to cheques. I move to strike out this 96th clause.

The motion was agreed to.

Hon. Mr. POWER. Does the leader of the House consider at all the effect of the addition to the 93rd clause? It appears to me that the provision of the English law was preferable to having the work done by justices of the peace, inasmuch as a great many of those officials in this country are not well qualified for doing notarial work.

Hon. Mr. ABBOTT. We have considered that point. We think that this practice, having been prevalent in Canada for a great many years, and having been found very satisfactory, should be continued. There are a great many of these officials throughout the country, and the fact of their appointment indicates that they possess some of the necessary qualifications. We feared that it might lead to abuse if any person could be taken to protest a note and make such a protest official and authentic. We propose to leave the clause as it is, especially as there has been no complaint as to the working of the present system.

Hon. Mr. McCLELAN, from the committee, reported the Bill with amendments, which were concurred in.

COMMONS AMENDMENTS CONSIDERED.

The Order of the Day being called, "Consideration of amendments made by the House of Commons to the amendments made by the Senate to Bill (6) "An Act relating to Bills of Exchange, Cheques and Promissory Notes."

Hon. Mr. ABBOTT said : The amendment which the House of Commons made to the Bill is an amendment to the 24th clause. This clause gave rise to a great deal of discussion in another place, the Bill first introduced providing that banks should not be responsible for the payment made upon a cheque on a forged endorsement. That was struck out in the Lower House and the banks were left responsible, as they were under the ordinary law of the country, for the payment of a cheque on which there was a forged endorsement. Now, this House considered that the time under which the banks would be subject to that liability was too long—it was too much to compel them to remain under such a liability for six years, during which time they probably would have lost all possibility of tracing the forgery ; and we fixed one year from the date on which the drawer of the cheque should receive notice of the payment of it by the delivery to him of any book, statement of account, cheques or otherwise during which the liability of the banks will continue. That was our amendment. When this Bill reached the House of Commons it was thought that was too long a period for the notice to run—that is to say, that the notice ought to be given to the bank in a shorter period than a year—and they thought it was too favorable to the bank to allow the delivery of the book or cheque, or statement of account, to be a notice ; and therefore they altered it in this way, that the notice must be given by the drawer within one month after he has “acquired notice of the forgery.” It seems difficult to ascertain how he could receive notice of the forgery, because in point of fact no one else is supposed to know about the forgery : he finds it out himself. If it is found out at all it must be he who discovers it, in all probability. Therefore, it does not appear to me to be an accurate way of describing the notice he should receive. But I also think, if the cheques are handed back to the drawer, that a court would probably hold that the giving back of the cheque with the forgery endorsed on it would be constructive notice, and would probably hold that he must give notice to the bank within one month after he receives back his cheques. That is a very short time indeed ; and moreover it must be remembered that this affects the party for whom the cheque was intended as well as the drawer. Therefore, the time is altogether too short.

Hon. Mr. SCOTT. Altogether. The man might be away in Europe.

Hon. Mr. ABBOTT. I have had some conversation with some gentlemen who moved the amendment in the Lower House and supported it, and with my hon. colleague, the Minister of Justice, who took part in the debate ; and I find that if we were to substitute the same period in their amendment which we put in our own

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amendment—that is, a year—it would probably be accepted, and it seems to me that the best way of remedying the difficulty is just to substitute a year for a month, the effect of which would be to restore the Bill to pretty much the form in which it left this House. I move that the amendment be not not concurred in, but that it be further amended by inserting the word "year" instead of "month" in the amendment.

Hon. Mr. DRUMMOND. I think in view of that amendment, the cheques should be returned frequently. It is not the practice of men in business to require their cheques to be returned to them oftener than once a year.

Hon. Mr. OGILVIE. The forgery would be noticed in the bank book.

Hon. Mr. DRUMMOND. Some people do not get their bank books back very often.

Hon. Mr. ABBOTT. If the banks wish to relieve themselves of the responsibility they can send back the cheques.

Hon. Mr. DRUMMOND. The suggestion that I was about to make was, that they should send back the cheques, say at the end of every month.

The motion was agreed to.

Hon. Mr. ABBOTT moved :

That the said Bill be returned to the House of Commons, by one of the Masters in Chancery, together with a Message to acquaint that House that the Senate does not concur in the amendment made by the House of Commons to the amendments made by the Senate to the said Bill, for the following reason :—

Because the limitation of the right of action, by the drawer against the drawee provided for by the amendment of the House of Commons to the amendments made by the Senate to clause 24 of the said Bill, to the period of one month after the drawer has acquired notice of such forgery, is too short for the proper protection of his rights and of the rights and interests of other parties who may be affected by such limitation; and further to acquaint that House that, for the said reason, the Senate hath amended the said amendment made by the House of Commons, by substituting therein the word "year" for the word "month," to which amendment the Senate doth desire the concurrence of that House.

The motion was agreed to.

CANADA REVISED STATUTES, 1886.

CHAPTER 123.

An Act respecting Bills of Exchange and Promissory Notes.

(Repealed by the Bills of Exchange Act, 1890.)

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. Every bill of exchange or promissory note which is made payable at a month, or months, from and after the date thereof, shall become due and payable on the same numbered day of the month in which it is made payable as the day on which it is dated,—unless there is no such day in the month in which it is made payable, in which case it shall become due and payable on the last day of that month,—with the addition, in all cases, of the days of grace allowed by law. 35 V., c. 10, s. 1. On what days bills and notes shall mature.

2. Whenever the last day of grace, in respect of the payment of a bill of exchange or a promissory note, falls on a legal holiday or non-juridical day in the Province where any such bill or note is payable, then the day next following not being a legal holiday or non-juridical day in such Province shall be the last day of grace as to such bill or note. 35 V., c. 8, s. 8, *part*;—42 V., c. 47, s. 4. When last day of grace is a non-juridical day.

3. In all matters relating to bills of exchange and promissory notes, the following and no other shall be observed as legal holidays or non-juridical days, that is to say:— Non-juridical days.

(a) In all the Provinces of Canada, except the Province of Quebec— Elsewhere than in Quebec.

Sundays;
New Year's Day;
Good Friday;
Easter Monday;
Christmas Day;

The birthday (or the day fixed by proclamation for the celebration of the birthday) of the reigning Sovereign ;

The first day of July (Dominion Day), and if that day is a Sunday, then the second day of July as the same holiday ;

Any day appointed by proclamation for a public holiday, or for a general fast, or a general thanksgiving throughout Canada ; and the day next following New Year's Day and Christmas Day, when those days respectively fall on Sunday ;

In Quebec.

(b) And in the Province of Quebec the said days, and also—

The Epiphany ;
The Annunciation ;
The Ascension ;
Corpus Christi ;
St. Peter and St. Paul's Day ;
All Saints' Day ;
Conception Day ;

Days fixed by
proclamation.

(c) And also, in any one of the Provinces of Canada, any day appointed by proclamation of the Lieutenant Governor of such Province, for a public holiday, or for a fast or thanksgiving within the same. 35 V., c. 8, s. 8, *part* ;—42 V., c. 47, s. 3 ;—46 V., c. 20, s. 11.

Acceptance
to be in
writing on
the bill.

4. No acceptance of any bill of exchange shall be sufficient to bind or charge any person, unless such acceptance is in writing on the bill, or if there is more than one part of such bill, then on one of the said parts. C. S. U. C., c. 42, s. 7 ;—C. S. L. C., c. 64, s. 5 ;—28 V. (N. S.), c. 10, s. 5 ;—R. S. N. B., c. 116, s. 4 ;—27 V., (P. E. I.), c. 6, s. 2.

What notice
of protest or
dishonor shall
be sufficient.

5. Notice of the protest or dishonor of any bill of exchange or promissory note payable in Canada shall be sufficiently given, if it is addressed, in due time, to any party to such bill or note entitled to such notice, at the place at which such bill or note is dated, unless any such party has, under his signature, on such bill or note, designated another place,—and in such latter case such notice shall be sufficiently given if addressed to him, in due time, at such other place ; and such notices so addressed shall be sufficient although the place of residence

of such party is other than either of such before mentioned places. 37 V., c. 47, s. 1.

6. No damages shall be recoverable in any action, suit or proceeding, brought in any Province of Canada, upon any bill of exchange drawn upon any person at any place in Canada or in the Island of Newfoundland, against any party thereto, except for the amount for which such bill of exchange is drawn, and for such further amounts as arise from the noting and protest of such bill of exchange, and interest thereon, and exchange and re-exchange thereon: Damages on bills payable in Canada or Newfoundland.

2. No damages shall be recoverable in any action, suit or proceeding, brought in any Province of Canada upon any bill of exchange drawn upon any person at any place not being in Canada or in the Island of Newfoundland against any party thereto, except for the amount for which such bill of exchange is drawn, and for two and one-half per cent thereon, and for such further amounts as arise from the noting and protest of such bill of exchange, and interest thereon, and exchange and re-exchange thereon. 38 V., c. 19, ss. 1 and 2. And on bills payable elsewhere.

7. All bills of exchange and promissory notes drawn or made at any place in the Province of Nova Scotia, for the sum of forty dollars and upwards, upon or in favor of any person or persons in the said Province, may, on default of the acceptance or payment thereof, be protested by a notary public; and such protest shall, in any action on such bill or note, be *prima facie* evidence of presentation and dishonor, and also of service of notice of such presentation and dishonor as stated in such protest; for which protest there shall be charged a notarial fee of fifty cents for protest and twenty-five cents for each notice. 42 V., c. 46, s. 1. Protest of non-accepted or unpaid bills or notes in Nova Scotia.

8. All bills of exchange and promissory notes payable at any place in the Province of Prince Edward Island, for the sum of forty dollars and upwards, may, on default of the acceptance or payment thereof, be protested by a notary public; and such protest shall, in any action on such bill or note, be *prima facie* evidence of presentation and dishonor, and also of service of notice of such pre- And in Prince Edward Island.

sentation and dishonor, as stated in such protest; for which protest there shall be charged a notarial fee of fifty cents for protest and twenty-five cents for each notice. 46 V., c. 22, s. 2.

General acceptance of a bill in P. E. I.

9. In the Province of Prince Edward Island, if any person accepts a bill of exchange, payable at the office or place of business of any bank or other place, without further expression in his acceptance, such acceptance shall be deemed and taken to be, to all intents and purposes, a general acceptance of such bill; but if the acceptor, in his acceptance, expresses that he accepts the bill payable at the office or place of business of any bank, or other place only, and not otherwise or elsewhere, such acceptance shall be deemed, and taken to be, to all intents and purposes, a qualified acceptance of such bill; and the acceptor shall not be liable to pay the said bill, unless payment has been first duly demanded at such office or place of business in such bank or other place. 27 V. (P. E. I.), c. 6, s. 1.

Qualified acceptance.

Notarial protest of note or bill evidence in N. B.

10. When any promissory note or bill of exchange is payable at any place out of the Province of New Brunswick, whether the same is drawn in or out of the said Province, a notarial protest of the presentment and dishonor of such promissory note or bill of exchange shall be received in all courts in the said Province as evidence of the fact of presentment and dishonor stated in such protest, in like manner as in case of a protest of non-payment of a foreign bill of exchange. 22 V. (N. B.), c. 22, s. 4.

No officer of a bank to act as notary.

11. No clerk, teller or agent of any bank shall act as a notary in the protesting of any bill or promissory note, payable at the bank, or at any of the agencies of the bank in which he is employed. C. S. C., c. 57, s. 3.

Bill given for a patent right to have certain words on its face.

12. Every bill of exchange or promissory note, the consideration of which consists, in whole or in part, of the purchase money of a patent right, or of a partial interest, limited geographically or otherwise, in a patent right, shall have written or printed prominently and legibly across the face thereof, before the same is issued, the words "given for a patent right." 47 V., c. 38, s. 1

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13. The endorsee or other transferee of any such in- Transferee to
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strument having the words aforesaid so printed or written
thereon, shall take the same subject to any defence or
set-off in respect of the whole or any part thereof, which
would have existed between the original parties. 47 V.,
c. 38, s. 2.

14. Every one who issues, sells or transfers, by indorse- Penalty for
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ment or delivery, any such instrument not having the
words "given for a patent right" printed or written in
manner aforesaid across the face thereof, knowing the
consideration of such instrument to have consisted, in
whole or in part, of the purchase money of a patent right,
or of a partial interest, limited geographically or other-
wise, in a patent right, is guilty of a misdemeanor, and
liable to imprisonment for any term not exceeding one
year, or to such fine, not exceeding two hundred dollars,
as the court thinks fit. 47 V., c. 38, s. 3.

15. Sections sixteen to twenty-six, both inclusive, Provisions
applicable to
Ontario.
apply to the Province of Ontario only.

16. If any person accepts a bill of exchange, payable General
acceptance
and promise.
at a bank, or at any other particular place, without fur-
ther expression in his acceptance, or makes a promissory
note payable at a bank, or at any particular place, with-
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2. If the acceptor expresses, in his acceptance, that he Qualified ac-
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accepts the bill payable at a bank, or at any other par-
ticular place only and not otherwise or elsewhere, or if
the maker of a promissory note expresses in the body of
the note that he promises to pay at a bank, or at any
other particular place only and not otherwise or else-
where, then such acceptance or promise shall be deemed
and taken to be a qualified acceptance or promise, and
the acceptor or maker shall not be liable to pay the bill
or note, unless payment has been first duly demanded at
such bank or other place. C. S. U. C., c. 42, ss. 5 and 6.

17. No bill of exchange or promissory note, although Bill or note
not void for
usury in cer-
tain cases.
given for a usurious consideration, or upon a usurious
contract, shall be void in the hands of an endorsee (or if

a note transferable by delivery, in the hands of a person who acquired the same as bearer), for valuable consideration, unless such endorsee or bearer had, at the time of discounting or paying such consideration for the same, actual knowledge that such bill of exchange or promissory note was originally given for a usurious consideration or upon a usurious contract. C. S. U. C., c. 42, s. 8.

No present-
ment on non-
juridical days.

18. No bill of exchange shall be presented for acceptance on any non-juridical day. C. S. U. C., c. 42, s. 19.

Damages and
interest
allowed in
certain cases
upon dis-
honored
notes.

19. If any promissory note payable only at some place in the United States of America, or in some one of the Provinces, Territories or Districts of Canada other than the Provinces of Ontario and Quebec, or in the Island of Newfoundland, and not otherwise or elsewhere, is made or negotiated within the Province of Ontario, and is protested for non-payment, the holder shall, in addition to the principal sum mentioned in the note, recover damages at the rate of four per cent. upon such principal sum, and also interest thereon at the rate of six per centum per annum, to be reckoned from the day of the date of the protest, and such aggregate amount, together with the expenses of protesting the note, and all charges and postages incurred thereon, shall be paid to the holder at the current rate of exchange of the day when the protest is produced and repayment demanded, that is to say: the holder of any such note, returned under protest, may demand and recover from the maker or endorsers thereof so much current money of Canada as shall then be equal to the purchase of a bill of exchange of the like amount drawn on the same place at the same date or sight, together with the damages and interest above mentioned, and also the expense of protesting the note, and all charges and postages incurred thereon. C. S. U. C., c. 42, s. 11.

How rate of
exchange
shall be
ascertained.

20. When the holder of a protested bill or note, returned for non-payment, notifies the drawer, maker or endorser of the dishonor thereof, in person, or delivers notice thereof, in writing, to an adult person at his or their counting house or dwelling house, and they disagree about the then rate of exchange for commercial bills, the holder and the drawer, maker or endorser so notified, or any of

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them, may apply to the president or, in his absence, to the secretary of any board of trade or chamber of commerce in the city or town, in which the holder of such protested bill or note, or his agent, resides, or in the city or town nearest to the residence of such holder or agent, in which there is a board of trade or chamber of commerce, and obtain from such president or secretary a certificate in writing under his hand, stating the said rate of exchange; and the rate stated in such certificate shall be final and conclusive as to the then rate of exchange, and shall regulate the sum to be paid accordingly. C. S. U. C., c. 42, s. 12.

21. Every bill, draft and order drawn by any person in the Province of Ontario on any person in either of the Provinces of Ontario or Quebec, and every promissory note made or negotiated in the Province of Ontario, if protested for non-payment, shall be subject to interest from the date of the protest, or if interest is therein expressed as payable from a particular period, then from such period to the time of payment; and in case of protest, the expense of noting and protesting, and the postages thereby incurred, shall be allowed and paid to the holder, over and above the said interest. C. S. U. C., c. 42, s. 13.

Inland bills
and notes to
bear interest.

22. Every protest of inland or foreign bills of exchange or promissory notes, for dishonor, either by non-acceptance or non-payment, may be made on the day of such dishonor, at any time after non-acceptance, or in case of non-payment, at any time after the hour of three o'clock in the afternoon. C. S. U. C., c. 42, s. 15.

Protest may
be made on
day of dis-
honor.

23. A notice of such protest shall be sent to each of the parties to the bill or note, and such notice shall be deemed to have been duly served, for all purposes, upon the person to whom the same is addressed, if it is deposited in the post office nearest to the place of making presentment of such bill or note, at any time during the day whereon such protest has been made, or the next judicial day then following. C. S. U. C., c. 42, s. 16.

How notice of
protest may
be served.

Form of protest and notice.

24. Every such protest and notice may be according to the forms set forth in schedule A to this Act, or to the like effect. C. S. U. C., c. 42, s. 21, *part*.

Notary's fees in Ontario.

25. The fees to be taken by notaries public, for the services hereinafter mentioned, shall be as follow, and no more, that is to say: for the protest of any bill, draft, note or order, fifty cents; for every notice, twenty-five cents; and for postage, the amount actually expended. C. S. U. C., c. 42, s. 22;—C. S. C., c. 57, s. 1.

Certain statutes respecting small notes not in force in Ontario.

26. The Act of the Parliament of Great Britain, passed in the fifteenth year of the reign of King George the Third, intituled "*An Act to restrain the negotiation of Promissory Notes and Inland Bills of Exchange, under a limited sum, within that part of Great Britain called England,*" and the Act of the said Parliament, passed in the seventeenth year of his said Majesty's reign, intituled "*An Act for further restraining the negotiation of Promissory Notes and Inland Bills of Exchange, under a limited sum, within that part of Great Britain called England,*" which are inapplicable to the Province of Ontario, shall not extend to or be in force therein, nor shall the said Acts make void any bills, notes, drafts or orders, which have been or may be made or uttered therein. C. S. U. C., c. 42, s. 1.

Provisions applicable to Quebec.

27. The following sections of this Act apply to the Province of Quebec only.

Notary's fees in Quebec.

28. The several fees and charges mentioned in schedule B to this Act, relating to the protesting and noting of bills and notes in the Province of Quebec, together with the postages pre-paid upon notices deposited at any post office, may be claimed from the holder of the bill or note by the notary or justice of the peace performing such duties, and shall be recovered from such parties thereto as are liable for the payment of the same. C. S. L. C., c. 64, s. 21.

Forms in Quebec.

29. The several notings, protests, notices thereof, and services of notices hereinbefore mentioned, shall be in the forms set forth in the said schedule. C. S. L. C., c. 64, s. 22.

30. Every person who represents himself to be a notary for or justice of the peace in the Province of Quebec, and who acts as such in and about the protesting of a bill or note, or in and about the noting of a bill, not being such notary for or justice in the Province of Quebec, is guilty of a misdemeanor, and liable to imprisonment for a term not exceeding six months. C. S. L. C., c. 64, s. 23.

Penalty if
unqualified
person notes
or protests
bills or notes.

The articles of the Civil Code of Lower Canada relating to this subject will be found in the collection of Statutes not consolidated. See *infra* page 534.

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NOVA SCOTIA REVISED STATUTES,

CHAPTER 82.

Of bills of exchange and promissory notes.

(Repealed by the Bills of Exchange Act, 1890.)

Promissory
notes negotia-
ble; who may
sue thereon.

2. A promissory note shall be assignable or endorsable in the same manner as an inland bill of exchange, and the payee or endorsee thereof, or the holder, where the note is payable to bearer, may bring an action thereon in his own name.

STATUTES,

NEW BRUNSWICK REVISED STATUTES,

CHAPTER 116.

Of Bills, Notes, and Choses in action.

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(Repealed by the Bills of Exchange Act, 1890.)

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2. A note in writing for money, payable to order or bearer, shall be assignable and endorsable in the same manner as an inland bill of exchange is by the custom of merchants; and the payee, endorsee, or holder thereof, may maintain an action thereon in his own name Notes negotiable.

NEW BRUNSWICK STATUTE,

30 VIC., (1867) CHAP. 34.

An Act to amend Chapter 116, Title XXX, of the Revised Statutes, "*Of Bills, Notes, and Choses in Action*;" also Act 12th Victoria, Chapter 39, relating thereto.

(Repealed by the Bills of Exchange Act, 1890.)

[*Passed 17th June, 1867.*]

Be it enacted by the Lieutenant-Governor, Legislative Council and Assembly as follows:—

1. That all notes, drafts or orders in writing for a sum certain payable otherwise than in money, shall be deemed Notes, &c., not payable in money, and held *prima facie* to import that they are given for a valuable consideration in like manner as promissory notes held as prima facie evidence of value. for the payment of money.

TARIFF OF FEES AND CHARGES IN THE PROVINCE
OF QUEBEC.

*See Schedule to Canada Revised Statutes 1886, ch. 123,
page 1656.*

For presenting and noting for non-acceptance any bill of exchange, and keeping the same on record.	\$1.00
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Copy of the same when required by the holder.	0.50
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For noting and protesting for non-payment any bill of exchange or promissory note, draft or order, and putting the same on record.	1.00
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For making and furnishing the holder of any bill or note with duplicate copy of any protest for non-acceptance or non-payment, with certificate of service a copy of notice served upon the drawer and endorsers.	0.50
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For every notice, including the service and recording copy of the same, to an endorser or drawer, in addition to the postages actually paid. C S. C., c. 57, s. 2;—C. S. L. C., c. 64, Sch.	0.50
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*From the Seventh Report of the Commissioners appointed
to codify the Laws of Lower Canada in civil
matters.*

TITLE FIRST.

OF BILLS OF EXCHANGE, NOTES AND CHEQUES.

The multitude of excellent treatises upon bills of exchange and the carefulness with which almost every conceivable question has been discussed, afford an abundance of material for the formation of a system of rules upon this most important subject. Pre liminary observations.

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The chief difficulty in the performance of the task lies in the care and circumspection required for making a safe and judicious selection. A degree of vagueness and uncertainty is discernable in the legal opinions among us as to the source from which we should practically derive our law upon this interesting subject. In the courts, reference is made more frequently to books of English law and of the modern French jurists than to the ancient law of France; a fact which has arisen in part from the want of that completeness and full adaptation which an extended commerce and an enlarged jurisprudence have given to the law of the present day, and not less from the absence of treatises of a character to fix as a system the law of that earlier period.

The works of Savary, a writer of great experience and industry, are based chiefly upon the Ordinance of 1673, which, according to the prevailing opinion, is not received as law with us. The same observation is true of the *Traité du change* of Pothier, and thus the guidance of that admirable jurist, which in almost all instances is so complete and unerring, cannot be implicitly followed in this. Merritt vs. Lynch, 9 L. C. Rep., 356.

Looking from these authors, to the usages among our merchants, and to the adjudged cases in the courts, more or less sanctioned by special statutory provisions, it would seem that our law in relation to bills of exchange has gradually been formed less from the ancient French law, which is its legitimate source than from the commercial usages and jurisprudence of England, aided by the legislation and learning of modern France. It can scarcely,

Story, *B. of*
Ex., § 11.—
 Heinecc., *Jus*
com., c. 1,
 § 11 *et seq.*

however, for that reason, be regarded as new law ; for the observation of Heineccius, as cited by Story, shews the breadth of the basis of all municipal laws on the subject of bills of exchange. The laws of all nations on this subject, he justly says, entirely agree in most things ; there are certain principles common to all nations which constitute the proper foundation upon which the whole law of exchange rests as a part of the municipal jurisprudence of each country. These principles having their origin in the customs and practice of exchange are considered so proper in themselves that all the just conclusions deducible from them are deemed of universal obligation.

The Commissioners have endeavoured to declare the law as thus indicated. A reference to the articles shews but imperfectly how large a range of books has necessarily been gone over in accomplishing their task.

In the matter of detail it was of course important to avoid unnecessary and cumbersome minuteness ; and an effort has been made to confine the articles to the announcement of general rules which are pretty well settled and of daily practical utility. To go beyond this would involve the hazard of trespassing upon the legitimate functions of the courts, in which a great number of decisions may be found, and others must continue to be given in development and application of these rules, upon points which cannot with safety be reduced to the form of codified law. The Ordinance of 1673, to which reference would naturally be first made for guidance as to the proper amount of detail, was not considered sufficiently comprehensive upon the subject. A more satisfactory example is found in the modern Code of Commerce, which in this respect, like the Civil Code in almost all its titles, contains a sufficient exposition of important rules, while it stops short of attempting to regulate specially the minor questions which are better than to deduction and doctrine. The articles of that code have been followed in some instances when they contain rules of a general character ; others consisting of legislation peculiar to the French system are of course not applicable here.

The title is divided into three chapters : the first, "Of Bills of Exchange ;" the second, "Of Promissory Notes ;" and the third "Of Cheques."

The first chapter is subdivided into nine sections, which will be noticed in their several places.

This section consists of eleven articles, the first and second of which declare the nature and essentials of a bill of exchange, it need only be observed with respect to these articles that they are in conformity with the usage of trade among us, and with the English, Scotch, and American law. They differ from the law of France, ancient and modern, which requires the bill of exchange to be made payable at a place different from that where it is drawn. In the origin of bills, remittance from place to place was their chief object and characteristic; but their nature and uses have since gradually changed, and although the rule under the old law was undoubtedly such as stated, yet the Commissioners see no object in going back to it, as the change would be attended with no practical result. In France it was necessary in order to give the right of *contrainte*, but that reason does not apply in this country. There is no reported case in which the question has been raised in our courts; although many have probably been before them in which it might have been; the case of Freer vs Bréhaut is one of these, and although that case was keenly contested, yet all the parties and both the courts in which it was litigated seemed to have taken it for granted that there was nothing objectionable in the form of the bill, which was both drawn and payable in Quebec.

Chap. 1. Of Bills of Exchange.
Section 1. Of the nature and requisites of Bills of exchange.
Arts. 1, 2.

Article 3 is in conformity with the law both of France and of England. Art. 3.

Article 4 expresses a rule concerning which there can be no doubt under our law. It is in all respects in conformity with the law of England and the more ancient law of France; but in the latter country legislative prohibitions were from time to time made against bills in blank and those payable to bearer, but they were for the most part imperfectly observed. A similar prohibition seems to be involved in the articles of the Code of Commerce. Art. 4.

Of the remaining articles of the section, Nos. 5, 6 and 7, the last only requires observation. It is taken from the statute book as cited. The rule established by the statute as to the expression of value is different from that which prevailed in France, where an expression of the kind of

Arts. 5, 6, 7.

value is made necessary both by the ancient and modern law. The only question which can arise under the article when no value is expressed, is whether the *onus* of proving value should rest upon the holder of the bill or upon the party from whom payment is demanded. The prevailing opinion is that as a general rule the value will be presumed, subject of course to be disproved by the party having an interest in doing so. This is the rule of the English law, which is derived as a consequence from the other rule that value need not be expressed.

Section II. Of
the negotiation
of Bills of
Exchange.
Art. 8.

Article 8 is taken substantially from the statute.

Art. 9.

The rule declared in article 9, as to the right to transfer a bill by endorsement after it is due and the effect of such endorsement, admits of no difficulty with us at the present day; it has been the constant usage derived from that of England and is recognized in a number of cases, one of which is reported and is cited under the article.

Arts. 10, 11.

Articles 10 and 11 require no remark.

Section III. Of
acceptance.
Arts. 12 to 19.

This section consists of eight articles, numbered from 12 to 19, containing well settled rules on the subject of the acceptance of bills, common to all the systems of commercial law to which any reference is made in this title.

Section IV. Of
noting and
protest for non-
acceptance.
Arts. 20 to 27.

The subject of noting and protest, which formerly was in a great part governed by usage, has been regulated by the precise provisions of our statute law, and the eight articles of this title, numbered from 20 to 27, are taken from it. They are not new, as the statute merely reduces to a concise and certain form the rules which were previously followed in practice.

Section V. Of
payment.
Arts. 28, 29, 30,
31, 40.

Of the thirteen articles of which this section consists, the first four, numbered 28, 29, 30 and 31, and the last, numbered 40, are taken from the statute, with the exception of the second clause of article 28, relating to the necessity of presentment to the drawee *au besoin*; this addition is justified by our own law and is consistent with that of England and the United States, although in the latter countries that form of drawing bills is less frequent than in France.

Arts. 32, 33.

Of the remaining articles, 32 requires no remark, and 33 relates to the warrantor, known in our law as *donneur d'aval*. In France, by the ancient law, it appears to have been necessary, in order to render the warrantor

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liable in all respects as endorser, that the *aval* should appear upon the bill, meaning of course upon the paper on which the bill was written, or upon an addition to it, so as to circulate with it. In England and the United States, it is probable that the same rule would be observed, although in those countries the guarantee seems usually to be given by an instrument distinct from the bill, and the liabilities of the warrantor under it are consequently more restricted. In modern France the articles 141, 142 of the Code of Commerce declare that the *aval* may be given either in the bill or separately with the same effect. The extent of the right of the *donneur d'aval* to set up want of diligence against the holder is declared as settled in the case of Merritt vs. Lynch.

The subject of the negotiability of the *aval* and of the liability of the warrantor under it is presented and discussed with care and intelligence in a useful little work on bills of exchange by Mr. Girouard.

Girouard, *Lett. de change*, ch. 4, § 85 et seq.

Articles 34, 35, 36, 37, contain well settled rules not differing in the French and English law.

Arts. 34, 35, 36, 37.

Article 38 declares the law in relation to lost bills; the same rule substantially exists in England by statute.

Art. 38.

Article 39 requires no remark.

Art. 39.

The first four articles of this section, numbered 41, 42, 43, 44, declaring the rules concerning protest for non-payment, are taken from the statute. The rules concerning the excuse of protest are declared in the last three, numbered 45, 46, 47; of these 45 is based upon the doctrine held in the case cited under it, in which the whole subject was reviewed and settled. Articles 46, 47 are in conformity with the law of both France and England.

Section VI. Of protest for non-payment. Arts. 41 to 47.

The seventh section consists of six articles, numbered 48, 49, 50, 51, 52, 53. Of the first and last of these it needs only to be observed that they embody rules which admit of no difficulty, being found in the French, English and American law. The other articles, 49, 50, 51, 52, are taken from the statute.

Section VII. Of notice of protest. Arts. 48 to 53.

The eight articles of this section, numbered from 54 to 61, declare positive rules established by the statutes.

Section VIII. Of interest, commission and damages. Arts. 54 to 61.

The articles of this section numbered 62, 63, 64, 65, with the exception of the last, are taken from the statute.

Section IX. General provisions. Arts. 62 to 65

Chapter II. Of
promissory
notes.

Arts. 67 to 70.

The rules concerning promissory notes are so nearly identical with those which apply to bills of exchange, that but few articles are required in this chapter; they are numbered 66, 67, 68, 69, 70.

The first of these corresponds with articles 1 and 2 of the first chapter in its definition; 67 requires no remark; 68 is an article of reference, specifying the subjects upon which promissory notes and bills of exchange are subject to the same rules; 69 declares a rule established by statute; and 70 contains merely a reference concerning bank notes. As these belong to an exceptional class of negotiable securities and are entirely regulated by statute, the Commissioners have considered that it does not properly fall within their duty to prepare provisions in detail on the subject.

Chapter III.
Of cheques.
Arts. 73 to 77.

A few articles only, numbered from 73 to 77, are submitted upon the subject of this chapter. They contain general rules which are derived from the books of best authority, and are, as the Commissioners believe, in conformity with the usage of merchants among us. All rules relating to cheques are derived from usage, sometimes general and sometimes purely local, as it has sprung up for the convenience of business operations.

These rules are founded for the most part upon the resemblance which cheques have to bills of exchange. They are indeed in almost all respects identical with inland bills of exchange and are so treated by the writers on English and American law. It is not so in modern France from their not being in the form which the Code of Commerce (article 110) makes sacramental and not being necessarily drawn in one place and payable in another. In the ancient law, if known at all, they were classed under the general head of *rescriptions* and were not regarded in any respect as bills of exchange, but as mandates, and were subject to the rules of the latter contract. Pothier treats of them under the name of *rescriptions* with his usual clearness.

Pothier,
Change, p. 187
et seq.

There is no textual law in France on the subject and they are vaguely enough treated in the cases reported in the English and American courts. The Dutch code has a long series of articles containing special rules with res

pect to cheques, but they are not of a nature to be adopted Dutch Code, tit. 7, sec. 2, as expressing the law or usage in this country. The art-arts, 210 et seq; icles submitted are all sustained in principle by the Levi, Com. Law, p. 54. citations made under them and do not require further remark.

Quebec 15th November, 1864.

ED. CARON.

C. D. DAY.

A. N. MORIN.

TITLE FIRST.

OF BILLS OF EXCHANGE, NOTES AND CHEQUES.

[Repealed by the Bills of Exchange Act, 1890.]

CHAPTER FIRST.

OF BILLS OF EXCHANGE.

SECTION I.

OF THE NATURE AND REQUISITES OF BILLS OF EXCHANGE

2279. A bill of exchange is a written order by one person to another for the payment of money absolutely and at all events.

Pothier, *Change*, No. 3.—2 Pardessus, *Droit Com.*, No. 330 et seq.—Smith, *Merc. Law*, 207, 208, 209.—Bayley, *Bills*, p. 1.—Story, *Bills of Ex.*, Nos. 52, 53.—3 Kent, *Com.*, p. 74.—Côté vs. Lemieux, 9 *L. C. Rep.*, p. 221.

2280. It is essential to a bill of exchange,

That it be in writing and contain the signature or name of the drawer ;

That it be for the payment of a specific sum of money only ;

That it be payable at all events without any condition' *Suprà*, art. 1.

2281. The parties to a bill of exchange, at the time of making it, are the drawer of the bill and the payee.

The drawee becomes a party by acceptance and is then called the acceptor.

Endorsors, warrantors upon the face of the bill (*donneurs d'aval*), the person requested to pay *au besoin*, who accepts, acceptors *supra protest*, and holders also become parties.

Domat, liv. 1, ch. 16, sec. 4.—Pothier, *Change*, Nos. 17 to 26.—1 Nouguiet, *Lettres de Change*, pp. 148, 149.—Bayley, *Bills*, ch. 1, § 2 et seq.—Story, *Bills of Ex.*, Nos. 35, 36, 254, 255.

2282. A bill of exchange may be made payable either to a certain person by name or other sufficient indication, or to such person or his order, or to the order of the drawer or to bearer.

If the name of the payee be left in blank the legal holder of the bill may fill up the blank.

Pothier, *Change*, Nos. 31, 223, 224.—1 Savary, *Parf. Nég.*, p. 201.—1 Nouguiet, *ib.*—Roscoe, *Bills*, pp. 2 and 22.—Story, *Bills of Ex.*, Nos. 54 to 57.—C. S. L. C., ch. 64, sec. 3.—*Contrà*, Ord. 1673, tit. 5, art. 1.—C. Com., 110.

2283. If no time be specified in the bill for its payment, it is held to be payable on demand; if no place be specified, it is payable generally.

C. S. L. C., *ib.*, sec. 9.—C. S. C., ch. 57, sec. 4.

2284. Foreign bills of exchange are usually drawn in sets of several parts, all of which the drawer is bound to deliver to the payee.

Pothier, *Change*, Nos. 37, 130.—2 Pardessus, *Droit Com.* No. 342.—1 Chitty and Hulme, p. 3.—Bayley, *Bills*, p. 30.—Story, *Bills*, No. 66.—C. Com., 110.

2285. When a bill contains the words "value received," value for the amount of it is presumed to have been received on the bill and upon the endorsements thereon. The omission of these words does not render the bill invalid.

Pothier, *Change*, No. 34.—Ord. 1673, tit. 5, art. 1.—C. S. L. C., *ib.*, sec. 4.—Duchessnay vs. Evarts, 2 *Rev. de Législation*, p. 31.—Hart vs. Macpherson, *cited by M. Girouard, Lettres de change*, p. 66.—Larocque et al. vs. Franklin Bank, 8 *L. C. Rep.*, p. 328.—Bayley, *Bills*, ch. 1, § 14, p. 40.—Story, *Bills of Ex.*, No. 63.—C., *Oblig.*, art. 8.—C. Com., 110, 137.

SECTION II.

OF THE NEGOTIATION OF BILLS OF EXCHANGE.

2286. Bills of exchange payable to order are transferred by endorsement which may be either in full or in blank. When endorsed in blank, they may become transferable by delivery. Bills payable to bearer are

transferable by delivery either with or without endorsement.

C. S. L. C., *ib.*, sec. 3.

2287. The transfer of a bill by endorsement may be made either before or after it becomes due. In the former case the holder acquires a perfect title free from all liabilities and objections which any parties may have had against it in the hands of the endorser; in the latter case the bill is subject to such liabilities and objections, in the same manner as if it were in the hands of the previous holder.

Pothier, *Change*, No. 141.—2 Pardessus, *Droit Com.*, 352.—Story, *Bills of Ex.*, No. 220.—Bayley, *Bills*, pp. 162, 163.—Wood *et al.* vs. Shaw, 3 *L. C. Jurist*, p. 175.

2288. An endorsement may be restrictive, qualified or conditional, and the rights of the holder under such endorsement are regulated accordingly.

But no endorsement other than that by the payee can stop the negotiability of the bill.

Bayley, *Bills*, p. 126.—Story, *Bills of Ex.*, No. 217.—3 Kent, *Com.*, p. 90.—2 Pardessus, *Droit Com.*, No. 348.—Chitty and Hulme, p. 17.

2289. The holder may, at his option, strike out the last endorsement although it be in full and any prior endorsement in blank subsequent to that of the payee.

Roscoe, *Bills*, p. 285.—3 Kent, *Com.*, p. 89.—Story, *Bills*, No. 208.

SECTION III.

OF ACCEPTANCE.

2290. Bills of exchange payable at sight, or at a certain period of time after sight or after demand, must be presented for acceptance.

The presentment is made by the holder, or in his behalf, to the drawee or his representative, at his domicile or place of business, or if the drawee be dead or cannot be found, and is not represented, presentment is made at his last known domicile or place of business.

If there be also a drawee *au besoin*, presentment is made to him in like manner.

Pothier, *Change*, Nos. 137, 146.—1 Nouguiér, p. 220, No. 3.—2 Pardessus, *Droit Com.*, Nos. 358, 362, 381.—Bayley, *Bills*, pp. 244, 245.—Story, *Bills*, Nos. 228, 229, 235, 254 Chitty, *Bills*, p. 301 (8th. Ed.)—C. S. L. C., ch. 64, sec. 15] § 2.—C. Com., 173.—*Infrà*, art. 2308.

2291. Presentment for acceptance when necessary must be made within a reasonable time from the making of the bill according to the usage of trade and the discretion of the courts.

Pothier, *Change*, No. 143.—Story, *Bills of Ex.*, No. 231.

2292. The acceptance must be in writing upon the bill or upon one of the parts of the bill.

C. S. L. C., ch. 64, sec. 5.

2293. The acceptance must be absolute and unconditional, but if the holder consent to a conditional or qualified acceptance the acceptor is bound by it.

Pothier, *Change*, Nos. 47 to 49.—Ord. 1673, tit. 5, art. 2.—2 Pardessus, *Droit Com.*, Nos. 370, 372.—Bayley, *Bills*, 201, 202.—Story, *Bills of Ex.*, No. 240.

2294. The effect of acceptance is to oblige the acceptor to pay the bill to the holder according to its tenor.

The signature of the drawer is admitted by the acceptance and cannot afterwards be denied by the acceptor against a holder in good faith.

Pothier, *Change*, Nos. 44, 115-117.—Heineccius, *de camb.*, ch. 26 et seq.; ch. 6, § 5.—2 Pardessus, *Droit Com.*, No. 376.—Story, *Bills of Ex.*, Nos. 113, 261, 262.—Bayley, *Bills*, pp. 318, 319.

2295. When a bill has been accepted and delivered to the holder, the acceptance cannot be cancelled otherwise than by the consent of all the parties to the bill.

Pothier, *Change*, No. 44.—1 Savary, *Parf. Nég.*, p. 840.—2 Pardessus, *Droit Com.*, No. 377.—Bayley, *Bills*, pp. 208 et seq.—3 Kent, *Com.*, p. 85.

2296. When a bill has been protested for non-acceptance or for non-payment it may with the consent of the holder be accepted by a third person for the honor of the parties to it or of any of them. Such acceptance benefits

the parties only who are subsequent to the one for whose honor it is made.

Pothier, *Change*, Nos. 113, 114, 170, 171.—Jousse, *Ord.* 1673, tit. 5, art. 3, p. 75.—2 Pardessus, *Droit Com.*, Nos. 383, 388.—Bayley, *Bills*, pp. 176 to 180.—Story, *Bills of Ex.*, Nos. 121, 122, 123, 125.—3 Kent, *Com.*, p. 87.—C Com., 126

2297. An acceptor *supra protest* is bound to give notice of his acceptance without delay to the party for whose honor he accepts and to other parties who may be liable to him on the bill.

Pothier, *Change*, Nos. 113, 114.—Jousse, *Ord.* 1673, tit. 5, art. 3, pp. 75, 76.—2 Pardessus, *Droit Com.*, No. 386.—Bayley, *Bills*, p. 179, 180.—Story, *Bills of Ex.*, Nos. 124, 256.—C. Com., 127.

SECTION IV.

OF NOTING AND PROTEST FOR NON-ACCEPTANCE.

2298. Whenever acceptance of a bill of exchange is refused by the drawee the bill may be forthwith protested for non-acceptance, and after due notice of such protest to the parties liable upon it, the holder may demand immediate payment of it from such parties in the same manner as if the bill had become due and had been protested for non-payment.

The holder is not bound afterwards to present the bill for payment, or, if it be so presented, to give notice of the dishonor.

C. S. L. C., ch. 64, sec. 10.

2299. The holder of any bill of exchange, instead of protesting upon the refusal to accept, may at his option cause it to be noted for non-acceptance, by a duly qualified notary; such noting to be made underneath or to be endorsed upon a copy of the bill and kept upon record by the officiating notary.

C. S. L. C., ch. 64, sec. 12.

2300. When a bill which has been noted for non-acceptance as provided in the last preceding article is afterwards protested for non-payment, a protest for non-

acceptance need not be extended, but the noting, with the date thereof and the name of the notary by whom the same was made, must be stated in the protest for non-payment.

C. S. L. C., ch. 64, sec. 12.

2301. Upon every bill noted or protested for non-acceptance, the words "noted for non-acceptance," or "protested for non-acceptance," as the case may be, together with the date of noting or protesting, and his fees and charges, must be written or stamped by the officiating notary, and subscribed by him with his name or initials as such notary.

C. S. L. C., ch. 64, sec. 12.

2302. When a bill is noted for non-acceptance the holder is not bound to give notice of the same in order to hold any party liable thereon. But whenever a bill so noted is afterwards protested for non-payment, the notice of such protest must contain a notice of the previous noting for non-acceptance.

C. S. L. C., ch. 64, sec. 20.

2303. The noting and protesting of bills of exchange for non-acceptance and the giving notice thereof, are done by the ministry of a single public notary without witnesses, in the manner and according to the forms prescribed by the act intituled: "An Act respecting Bills of Exchange and Promissory Notes."

Ib., secs. 11, 22.—C., *Oblig*, art 228.

2304. In case there is no notary in the place, or he is unable or refuses to act, any justice of the peace in Lower Canada, may make such noting and protest and give notice thereof in the same manner, and his acts in that behalf have the same effect as if done by a notary; but such justice must set forth in the protest the reasons why the same was not made by the ministry of a notary.

C. S. L. C., ch. 64, sec. 24.

2305. The duplicate protest and notice, with the certificate of service, and all copies thereof attested by the signatures of the notary or the justice of the peace as the case may be, are *primâ facie* evidence.

Ib., secs. 14, 24.—C. S. C., ch. 57, sec. 6.

SECTION V.

OF PAYMENT.

2306. Every bill of exchange must be presented by the holder, or in his behalf, to the drawee or acceptor for payment, on the afternoon of the third day after the day it becomes due, or after presentment for acceptance, if drawn at sight; unless such third day falls upon a legal holiday, in which case the next day thereafter not being a legal holiday is the last day of grace. If the bill be payable at a bank, presentment may be made there either within or after the usual hours of banking.

If the bill be unaccepted and there be a drawee *au besoin*, presentment must be made in like manner to him also.

Ib., secs. 6, 15, 32.—C. S. C., ch. 57, sec. 5.—Pothier, *Change*, No. 137.—Chitty, *Bills*, (8th ed.) pp. 187, 188, 262.—Story, *Bills*, No. 65.—3 Kent, *Com.*, p. 88.—2 Pardessus, *Droit Com.*, No. 341.

2307. If a bill of exchange be made payable at any stated place, either by its original tenor or by a qualified acceptance, presentment must be made at such place.

C. S. L. C., ib., secs. 9, 15.—C. S. C., ib., sec. 4.

2308. If the bill be payable generally, presentment is made to the drawee or acceptor, as the case may be, either personally, or at his residence, or office, or usual place of business; or if by reason of his absence and not having any known residence, or office, or place of business or of his death, such presentment cannot be so made, it may be made at his last known residence, or office, or usual place of business, where the acceptance, or, if there be no acceptance, where the bill bears date.

C. S. L. C., ib., sec. 2.

2309. If a bill payable generally be accepted before and become due after the appointment duly notified of an assignee to the estate of the acceptor, in the case of an insolvent trader, presentment for payment may be made either to the insolvent or to the assignee personally, or at the residence, or office, or usual place of business of either of them.

C. S. L. C., ib., sec 18.

2310. The acceptor, drawer and endorsers of a bill of exchange, are jointly and severally liable to the holder for the payment of it.

The liability of the drawer and endorsers, and also of acceptors *supra protest*, is subject to the rules concerning protest and notice herein contained.

Pothier, *Change*, Nos. 58, 79, 117.—Story, *Bills of Ex.*, 107, 108, 113 to 118, and *authorities cited*.—C. Com., 140.

2311. A third person who becomes warrantor (*donneur d'aval*), on a bill of exchange is liable in the same manner and to the same extent as the person in whose behalf he so becomes warrantor.

He is bound by the diligence which binds his principal, and is not entitled to any notice of protest apart from the latter.

Pothier, *Change*, Nos. 50, 122, 123.—1 Savary, *Parf. Nég.*, p. 205, vol. 2, p. 94.—2 Pardessus, *Droit Com.*, Nos. 394, 396, 397.—Jousse, *Ord.* 1673, art. 33, pp. 131, 132.—Story, *Bills of Ex.*, Nos. 372, 393-5, 454-6.—Story, *Prom. Notes*, Nos. 460, 484.—1 Bell, *Com.*, 376.—C. Com., 141, 142.—Marrett vs. Lynch, 9 *L. C. R.*, p. 353.—10 *Louis. Rep.* (O. S.), p. 374.

2312. The obligation of the acceptor to pay the bill is primary and unconditional, and legal payment by him discharges the bill with respect to all the parties, unless he is an acceptor for honor, in which case he is substituted in the place of the party for whose honor he accepts and has his recourse against such party also.

The rule above declared is without prejudice to the rights of an acceptor against the party for whose accommodation he has accepted.

2 Nouguiet, pp. 342, 343.—Story, *Bills of Ex.*, Nos. 256 257, 410, 420, 422.—*Supra*, art. 2310.

2313. Payment by the drawer of an unaccepted bill finally discharges it. If it be accepted he is entitled to recover from the acceptor, unless the acceptance is for his accommodation.

Supra, art. 2310.—2 Nouguiet, p. 350.—Story, *Bills of Ex.*, No. 422.

2314. Payment by an endorser entitles him to recover from the acceptor and drawer and all the endorsers prior to himself; saving the rights of the acceptor for his accommodation.

Same authorities.

2315. Payment of a bill must be made upon that part of the set upon which the name of the party paying appears, and such part should be delivered to him, otherwise he will not be discharged from his liability to innocent holders of such part of the bill.

C. Com., 145, 147.

2316. Payment of a lost bill of exchange may be recovered upon the holder making due proof of the loss, and also, if the bill be negotiable, on giving security to the parties liable, according to the discretion of the court.

Jousse, *Ord.* 1673, tit. 5, arts. 18, 19, p. 111.—2 Bornier, p. 591.—Smith, *Merc. Law*, pp. 285, 286.—Story, *Bills of Ex.*, Nos. 447 *et seq.*; do. *Prom. Notes*, Nos. 106 *et seq.*—C., *Oblig.*, art. 252.—C. Com., 150, 151, 152, 153.

2317. Payment may be made of a bill of exchange after protest, by a third person for the honor of any party to it, and the person so paying has his recourse against the party for whom he pays and all those liable to such party on the bill.

If the person paying do not declare for whose honor he pays, he has his recourse against all the parties upon the bill.

Pothier, *Change*, Nos. 170, 171.—2 Pardessus, *Droit Com.*, No. 405.—1 Bell, *Com.*, pp. 312, 334.—C., *Oblig.*, 160.—C. Com., 158, 159.

2318. Payment of a bill must include the full amount of it with interest from the last day of grace and all expenses of noting, protest and notices legally incurred upon it, with damages in the cases hereinafter stated.

C. S. L. C., ch. 64, secs. 7, 21.

SECTION VI.

OF PROTEST FOR NON-PAYMENT.

2319. Bills of exchange after presentment for payment, as provided in the fifth section of this chapter, if not then paid, are protested for non-payment, in the afternoon of the last day of grace.

The protest is held to have been made in the afternoon of the day on which it bears date unless the contrary appears on the face of it.

Supra, arts. 28, 29, 30, 31.—C. S. L. C., *ib.*, sec. 16, § 2 sec. 17, § 2.

2320. Protests for non-payment are made by the ministry of the same persons and in the same manner and form as protests for non-acceptance, and are subject to the same rules of proof.

If the bill have been noted for non-acceptance it must be so stated in the protest for non-payment, as declared in article 2300 of this title.

Supra, arts. 2302, 2303, 2304.—C. S. L. C., ch. 64, secs 11, 14, 20, 22.

2321. Bills drawn abroad upon any person in Lower Canada, or payable or accepted at any place therein, are subject, as to all parties therein resident and liable on such bills, to the rules contained in this title with respect to the days of grace and the noting and protesting of bills for non-acceptance and for non-payment, and the notification and service of protests, and also with respect to commission and interest.

C. S. L. C., *ib.*, sec. 5.

2322. In default of protest for non-payment, according to the articles of this section, and of notice thereof, as provided in the section next following, the parties liable on the bill other than the acceptor are discharged, subject nevertheless to the exceptions contained in the two following articles.

C. S. L. C., ch. 64, sec. 16, § 2.

2323. The drawer cannot avail himself of the want of protest or notice, unless he proves that provision was duly made by him for the payment of the bill.

The Bank of Montreal vs. Knapp et al, 1 L. C. Rep., pp. 252 et seq.—C. Com., 115, 116, 117.

2324. The want of protest and notice is excused when they are rendered impossible by inevitable accident or irresistible force. They may also be waived by any party to the bill, in so far as his rights only are concerned.

Pothier, *Change*, No. 144.—2 Pardessus, *Droit Com.*, Nos. 426, 434, 435.—Bécane, *Droit Com.*, p. 99, note.—Bayley, *Bills*, pp. 294, 295, (5th ed).—3 Kent, *Com.*, p. 113.—Story, *Bills of Ex.*, No. 327.

2325. Want of protest and notice is not excused by the loss of the bill or by the death or bankruptcy of the drawee or of the party entitled to notice.

Pothier, *Change*, Nos. 145, 146.—Byles, *Bills*, No. 193.—Story, *Bills of Ex.*, No. 326.

SECTION VII.

OF NOTICE OF PROTEST.

2326. Notice of protest for non-acceptance or for non-payment is given at the instance of the holder, or of any party liable on the bill who has received notice and who on paying will be entitled to recover from other parties upon the bill.

Pothier, *Change*, No. 153.—Bayley, *Bills*, p. 270, note 147, (6th ed).—1 Bell, *Com.*, p. 330, No. 259.—Story, *Bills of Ex.*, Nos. 291, 303, 304, 388.

2327. The notice is given by the notary or justice of the peace by whom the protest is made, and such notice, together with the certificate of service thereof, is in the form prescribed in the act intituled "An Act respecting Bills of Exchange and Promissory Notes."

C. S. L. C., ib., sec. 22.—*Supra*, arts. 2303, 2304.

2328. The notice is given to the party entitled thereto personally, or at his residence, or office, or usual place of business, and in case of death or absence at his last residence, office, or place of business; or the notice, directed to the party, may be deposited in the nearest post office communicating with his actual or last residence,

office, or place of business as aforesaid, as the case may be; the postage being prepaid.

C. S. L. C., *ib.*, sec. 13.

2329. In the case of an insolvent trader the notice may be given as provided in the last preceding article, or to the assignee of the insolvent estate, provided the bill were drawn or endorsed by the insolvent before the assignment, or the attachment in compulsory liquidation

Ibid., § 2.

2330. Service of the notice of protest, whether for non-acceptance or for non-payment may be made at any time within three days next after the day on which the bill is protested.

Ibid., sec. 19.

2331. The party notified is bound to give notice, within a reasonable delay, to any parties to the bill whom he intends to hold liable, upon it, other than the acceptor.

Pothier, *Change*, Nos. 148 to 153.—Chitty, *Bills*, pp 520, 521, (8th ed.)—3 Kent, *Com.*, pp. 108, 109.—Story, *Bills of Ex.*, No. 384.—C. Com., 164.

SECTION VIII.

OF INTEREST, COMMISSION AND DAMAGES.

2332. The amount of interest which may lawfully be paid upon the principal sum of a bill of exchange, for the discount thereof, may be taken at the time of discounting.

C. S. L. C., ch. 64, sec. 26.

2333. Any person who discounts or receives a bill of exchange, payable in Lower Canada, at a distance from the place where it is discounted or received, may take or recover, besides interest, a commission sufficient to defray the expenses of agency and exchange in collecting the bill. Such commission not in any case to exceed one per cent. on the amount of the bill.

This article does not apply to banks, which are subject to the provisions contained in the next following article.

Ibid., sec. 27.—C. S. C., ch. 58, secs. 4, 5, 7.

2334. Banks in this Province discounting bills of exchange may receive, for defraying the expenses attending their collection, a commission on the amount according to the rates and in the manner prescribed in the act intituled "An Act respecting interest."

C. S. C., ch. 58, secs. 5, 7 ; ch. 55, sec. 110.

2335. Bills drawn for an usurious consideration are not void in the hands of an innocent holder for valid consideration.

C. S. L. C., ch. 64, sec. 28.

2336. Bills of exchange drawn, sold, or negotiated within Lower Canada, which are returned under protest for non-payment, are subject to ten per cent. damages if drawn upon persons in Europe, or the West Indies, or in any part of America not within the territory of the United States or British North America.

If drawn upon persons in Upper Canada, or in any other of the British North American Colonies, or in the United States, and returned as aforesaid, they are subject to four per cent. damages.

With interest, at six per cent, in each case from the date of the protest.

C. S. L. C., *ibid.*, sec. 1.

2337. The amount of damages and interest specified in the last preceding article, are reimbursed to the holder of the bill at the current rate of exchange of the day when the protest is produced and repayment demanded ; the holder being entitled to recover so much money as will be sufficient to purchase another bill drawn on the same place and at the same term for a like amount, together with the damages and interest, and also the expenses of noting and protesting and of postages thereon.

Ibid., § 2.

2338. When notice of the protest of a bill returned for non-payment is given by the holder thereof to any party secondarily liable upon it, in person or by writing delivered to a grown person at his counting house, or dwelling house, and they disagree as to the rate of exchange, the holder and the party notified appoint each an arbitrator to determine the rate ; these in case of disa-

greement appoint a third, and the decision of any two of them given in writing to the holder is conclusive as to the rate of exchange and regulates the sum to be paid accordingly.

Ibid., sec. 2.

2339. If either the holder or the party notified, as provided in the last preceding article, fail, for the space of forty-eight hours after the notification, to name an arbitrator on his behalf, the decision of the single arbitrator on the other part is conclusive.

Ibid., § 2.

SECTION IX.

GENERAL PROVISIONS.

2340. In all matters relating to bills of exchange not provided for in this code recourse must be had to the laws of England in force on the thirtieth day of May, one thousand eight hundred and forty-nine.

Ibid., sec. 30.

2341. In the investigation of facts, in actions or suits founded on bills of exchange drawn or endorsed either by traders or other persons, recourse must be had to the laws of England in force at the time specified in the last preceding article, and no additional or different evidence is required or can be adduced by reason of any party to the bill not being a trader.

Ibid., § 2.—Code, *Oblig.*, ch. 9, sec. 6.

(Not repealed by the Act.)

2342. The parties in the actions or suits specified in the last preceding article may be examined under oath as provided in the title "Of Obligations."

Ibid., sec. 3.

(Not repealed by the Act.)

2343. The rules concerning the prescription of bills of exchange are contained in the title "Of Prescriptions."

Code, *Prescrip.*, 2260.

CHAPTER SECOND.

OF PROMISSORY NOTES.

2344. A promissory note is a written promise for the payment of money at all events, and without any condition. It must contain the signature or name of the maker and be for the payment of a specific sum of money only. It may be in any form of words consistent with the foregoing rules.

Pothier, *Change*, No. 216.—2 Pardessus, *Droit Com.*, No. 478.—Bayley, *Bills*, p. 1.—Story, *Prom. Notes*, No. 1.—*Supra*, art. 2279.

2345. The parties to a promissory note at the time of making it are the maker and the payee. The maker is subject to the same obligations as the acceptor of a bill of exchange.

Bayley, *Bills*, p. 169.—Story, *Prom. Notes*, No. 4.—C. S. L. C., ch. 64.

2346. The provisions concerning bills of exchange contained in this title apply to promissory notes when they relate to the following subjects, viz :

1. The indication of the payee ;
2. The time and place of payment ;
3. The expression of value ;
4. The liability of the parties ;
5. Negotiation by endorsement or delivery ;
6. Presentment and payment ;
7. Protest for non-payment and notice ;
8. Interest, commission and usury ;
9. The law and the rules of evidence to be applied ;
10. Prescription.

2347. Parties liable on promissory notes made payable on demand are not entitled to days of grace for the payment thereof.

C. S. L. C., ib., sec. 6, § 2.

2348. The making, circulation, and payment of bank notes are regulated by the provisions of a statute entitled "An Act respecting banks and freedom of banking," and by the special acts of incorporation of the banks respectively.

C. S. C., ch. 55

CHAPTER THIRD.

OF CHEQUES.

2349. A cheque is a written order upon a bank or banker for the payment of money. It may be made payable to a particular person, or to order, or to bearer, and is negotiable in the same manner as bills of exchange and promissory notes.

Chitty, *Bills*, p. 545 (8th ed.)—Chitty and Hulme, p. 24.—Roscoe, *Bills*, p. 9.—2 Pardessus, *Droit Com.*, 464 to 467.—Story, *Prom. Notes*, Nos. 488, 490, 491.

2350. Cheques are payable on presentment, without days of grace.

Authorities, supra, art. 2349.

2351. The holder of a cheque is not bound to present it for acceptance apart from payment; nevertheless, if it be accepted, he has a direct action against the bank or banker, without prejudice to his claim against the drawer, either upon the cheque or for the debt on account of which it was received.

Pothier, *Change*, Nos. 230, 232.—Story, *Prom. Notes*, No. 494a.

2352. If the cheque be not presented for payment within a reasonable time, and the bank fail between the delivery of the cheque and such presentment, the drawer or endorser will be discharged to the extent of the loss he suffers thereby.

Pothier, *Change*, No. 229.—Chitty and Hulme, pp. 32, 48.—Story, *Prom. Notes*, Nos. 493, 498.—3 Kent, *Com.*, p. 104, note d.—*Supra*, art. 2223.

2353. Subject to the provisions contained in the last preceding article, the holder of a cheque who has received it from the drawer, may upon refusal of payment by the bank or banker return it to the drawer with reasonable diligence, and recover the debt for which it was given, or he may retain the cheque and recover upon it without protest.

If the cheque be received from any other party than the drawer, the holder may in like manner return it to such party, or he may recover from the parties whose

names are upon it as in the case of an inland bill of exchange.

Pothier, *Change*, No. 219.—1 Savary, pp. 238, 244; id. 2d vol., 156, 166, 715, 719, 745, 748.—Story, *Prom. Notes*, No. 498.

2354. In the absence of special provisions in this section, cheques are subject to the rules concerning inland bills of exchange in so far as their application is consistent with the usage of trade.

1 Chitty and Hulme, p. 24.—Roscoe, *Bills*, p. 9.—Smith *Mer. Law*, p. 206.—3 Kent, *Com.*, pp. 75, 77.—Story, *Prom Notes*, Nos. 488, 489.

CANADA REVISED STATUTES, 1886, c. 165.

R. S., c. 165.

(*In force.*)

AN ACT RESPECTING FORGERY.

28. Every one who with intent to defraud, forges or alters, or offers, utters, disposes of or puts off, knowing the same to be forged or altered, any bill of exchange, or any acceptance, endorsement or assignment of any bill of exchange, or any promissory note for the payment of money, or any endorsement on or assignment of any such promissory note, is guilty of felony, and liable to imprisonment for life.

29. Every one who, with intent to defraud, forges or alters, or offers, utters, disposes of or puts off, knowing the same to be forged or altered, any undertaking, warrant, order, authority, or request for the payment of money, or for the delivery or transfer of any goods or chattels, or of any note, bill or other security for the payment of money, or for procuring or giving credit, or any endorsement on or assignment of any such undertaking, warrant, order, authority or request, or any accountable receipt, acquittance, or receipt for money, or for goods, or for any note, bill, or other security for the payment of

money, or any endorsement on or assignment of any such accountable receipt, or any account, book or thing, written or printed, or otherwise made capable of being read, is guilty of felony, and liable to imprisonment for life.

30. Every one who, with intent to defraud, draws, makes, signs, accepts, or endorses any bill of exchange or promissory note, or any undertaking, warrant, order, authority, or request, for the payment of money, or for the delivery or transfer of goods or chattels, or of any bill, note, or other security for money, by procuration or otherwise, for, in the name, or on the account of any other person, without lawful authority or excuse, or offers, utters, disposes of or puts off any such bill, note, undertaking, warrant, order, authority or request, so drawn, made, signed, accepted, or endorsed, by procuration or otherwise, without lawful authority or excuse, knowing the same to have been so drawn, made, signed, accepted, or endorsed as aforesaid, is guilty of felony, and liable to fourteen years imprisonment.

THE BRITISH COMPANIES' ACT, 1862.

25 & 26 VIC., c. 89.

(Not in force in Canada.)

Name of company to be on all bills, notes &c.

41. Every limited company under this Act, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraven in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

42. If any limited company under this Act does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a penalty not exceeding £5 for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall be liable to the like penalty; and if any director, manager, or officer of such company, or any person on its behalf, uses, or authorises the use, of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues, or authorizes the issue, of any notice, advertisement, or other official publication of such company, or signs, or authorizes to be signed, on behalf of such company, any bill of exchange, promissory note, endorsement, cheque, order for money or goods, or issues, or authorizes to be issued, any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of £50, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

Liability of
officers of
company on
bills and notes.

25 & 26 Vic.,
c. 89.

47. A promissory note or bill of exchange shall be deemed to have been made, accepted or endorsed on behalf of any company under this Act, if made, accepted, or endorsed in the name of the company by any person acting under the authority of the company, or if made, accepted, or endorsed by or on behalf, or on account of the company, by any person acting under the authority of the company.

Promissory
notes and bills
of exchange.

CANADA REVISED STATUTES, 1886, c. 118.

THE COMPANIES' CLAUSES ACT.

(In force.)

3. This Act applies to every Joint Stock Company incorporated subsequent to the 22nd day of June, 1869, by any special Act of the Parliament of Canada for any of the purposes or objects to which the legislative authority of the Parliament of Canada extends, except companies for the construction and working of railways, or the business of banking and the issue of paper money, or insurance, and so far as it is applicable to the undertaking, and is not expressly varied or accepted by the special Act, is incorporated with it, and forms part thereof, and shall be construed therewith as forming one Act.

35. Every contract, agreement, engagement, or bargain made, and every bill of exchange drawn, accepted or endorsed, and every promissory note and cheque made, drawn or endorsed on behalf of the Company by any agent, officer, or servant of the Company in general accordance with his powers as such, under the by-laws of the Company shall be binding upon the Company, and in no case shall it be necessary to have the seal of the Company affixed to any such contract, agreement, engagement, bargain, bill of exchange, promissory note or cheque, or to prove that the same was made, drawn, accepted or endorsed, as the case may be, in pursuance of any by-law or special vote or order; and the person so acting as agent, officer, or servant of the Company, shall not be thereby subjected individually to any liability whatsoever to any third person therefor; provided always that nothing in this section shall be construed to authorize the Company to issue any note payable to the bearer thereof, or any promissory note intended to be circulated as money or as the note of a bank, or to engage in the business of banking or insurance. 32-33 V., c. 12, s. 31.

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39. The directors of the Company shall be jointly and severally liable upon every written contract or undertaking of the Company, on the face whereof the word "limited," or the words "limited liability" are not distinctly written or printed after the name of the Company, where it first occurs in such contract or undertaking. 32-33 V., c. 12, s. 39.

CANADA REVISED STATUTES, 1886, c. 119.

AN ACT RESPECTING THE INCORPORATION OF JOINT STOCK COMPANIES BY LETTERS PATENT.

(In force.)

2. In this article the expression "the company," means the company incorporated by letters patent under this Act.

76. Every contract, agreement, engagement or bargain made, and every bill of exchange drawn, accepted or endorsed, and every promissory note and cheque made, drawn or endorsed on behalf of the company, by any agent, officer or servant of the company, in general accordance with his powers as such under the by-laws of the company, shall be binding upon the company; and in no case shall it be necessary to have the seal of the company affixed to any such contract, agreement, engagement, bargain, bill of exchange, promissory note or cheque or to prove that the same was made, drawn, accepted or endorsed, as the case may be, in pursuance of any by-law or special vote or order; and the person so acting as agent, officer or servant of the company shall not be thereby subjected individually to any liability whatsoever to any third person therefor: Provided always that nothing in this Act shall be construed to authorize the company to issue any note payable to the bearer thereof, or any promissory note intended to be circulated as money, or as the note of a bank, or to engage in the business of banking or insurance. 40 V., c. 43, s. 66.

Contracts, &c.,
when to be
binding on
Company.

Proviso: not
to issue paper
money.

Word "limited" to be inserted after name of Company on all notices &c.

79. The company shall keep painted or affixed, its name, with the word "limited" after the name, on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible, and shall have its name, with the said word after it, engraven in legible characters on its seal, and shall have its name, with the said word after it, mentioned in legible characters in all notices, advertisements and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods, purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices and receipts of the company.

Penalty for violation of preceding section.

2. Every company which does not keep painted or affixed its name, with the word "limited" after it, in manner directed by this Act, shall incur a penalty of twenty dollars for every day during which such name is not so kept painted or affixed.

Penalty for permitting violation.

3. Every director and manager of the company, who knowingly and wilfully authorizes or permits such default, shall be liable to the like penalty.

Penalty on Directors or officers using or authorizing use of seal without "limited" on it.

4. Every director, manager or officer of the company and every person on its behalf who uses or authorizes the use of any seal purporting to be a seal of the company whereon its name, with the said word "limited" after it, is not so engraven as aforesaid, or who issues or authorizes the issue of any notice, advertisement or other official publication of such company, or who signs or authorizes to be signed on behalf of such company any bill of exchange, promissory note, endorsement, cheque, order for money or goods, or who issues or authorizes to be issued any bill of parcels, invoice, or receipt of the company, wherein its name, with the said word after it, is not mentioned in manner aforesaid, shall incur a penalty of two hundred dollars, and shall also be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

40 V., c. 43, secs. 78 and 79.

Contracts, &c., when to be binding on Company.

Proviso: not to issue paper money.

CANADA REVISED STATUTES, 1886, c. 129.

An Act respecting Insolvent Banks, Insurance Companies, Loan Companies, Building Societies, and Trading Corporations, known as "The Winding up Act."

Sec. 31. The liquidator may, with the approval of the court, and upon such previous notice to the creditors, contributaries, shareholders or members, as the court orders,—(f) draw, accept, make and endorse any bill of exchange or promissory note, in the name and on behalf of the company; raise upon the security of the assets of the company, from time to time, any requisite sum or sums of money; and the drawing, accepting, making or endorsing of every such bill of exchange or promissory note, as aforesaid, on behalf of the company, shall have the same effect, with respect to the liability of such company, as if such bill or note had been drawn, accepted, made or endorsed by or on behalf of such company in the course of the carrying on of its business.

CODE OF CIVIL PROCEDURE OF LOWER CANADA.

(In force in Quebec only since the 28th of June, 1867.)

Art 49. In actions upon bills of exchange or promissory notes, or any private writings, whether negotiable or not, it is sufficient to give the initials of the Christian or first names of the defendant, such as they are written upon such bills, notes or instruments.

When a corporate body is a party to a suit, it is sufficient to insert its corporate name, and to indicate its principal place of business.

Art 89. If, in any action founded upon a bill of exchange, promissory note, *cédule*, cheque, act or private writing, the defendant fails to appear or plead, judgment may be rendered out of town, upon the written application of the plaintiff, without its being necessary to prove the signatures to such documents, or to make any other proof.

145. Every denial of a signature to a bill of exchange, promissory note or other private writing or document upon which any claim is founded, must be accompanied with an affidavit of the party making the denial, or of some person acting as his agent or clerk and cognizant of the facts in such capacity, that such instrument or some material part thereof is not genuine, or that his signature or some other on the document is forged, or, in the case of a promissory note or bill of exchange, that the necessary protest, notice and service have not been regularly made, stating in what the irregularity consists; without prejudice, however, to the recourse of such party by improbation. C. S. L. C., c. 83, s. 86, § 2.

[In the case of promissory notes, or bills of exchange payable at a particular place, they are presumed, as against the maker or acceptor, to have been presented at that place at maturity, unless the exception founded upon such want of presentation is accompanied with an affidavit that, at the time they became due, provision had been made for their payment at the specified place.]

As to the summary jurisdiction in Quebec, see Quebec Statutes, 51-52 Vic., c. 26, 1888.

See also. 52 Vic., c. 48, 1889.—The effect of this statute is to permit the institution of the action either before the Court of the district where the bill is made and dated, or before the Court of the district where it is made payable. *Leclair v. Beaulieu*, M. L. R., 5 S. C. 45; *Banque du Peuple v. Prévost*, M. L. R., 6 S. C., 88; 20 R. L., 7; *Lockerby v. Weir*, M. L. R., 6 S. C., 285.

The following digest of cases is from Foran's Code of Civil Procedure, 1879, p. 122.

1. A *défense en fait* to an action on a promissory note will be rejected on motion, if unsupported by affidavit. *Laprise v. Méthot*, 4 Q. L. R., 328, S. C., 1877.

Contra: *The Mechanics' Bank v. Seale*, 20 L. C. J., 196, S. C., 1876.

2. The defendant pleaded that the note sued on had been obtained from him by surprise and false representations, and for insufficient consideration.—*Held*, that he was not bound to produce with such plea an affidavit under C. S. L. C., cap. 38, sec. 86. *McCarthy v. Barthe*, 6 L. C. J., 130.

3. The defendant pleaded want of notice of protest, but produced no affidavit in support of such plea.—*Held*, that the action would be maintained, notwithstanding that no protest had been given. *The Bank of Upper Canada & Turcotte*, 15 L. C. R., 276.

4. The defendant pleaded want of consideration.—*Held*, that he was bound to produce with such plea an affidavit under C. S. L. C., cap. 83, sec. 86. *Kelly v. O'Connell*, 16 L. C. R., 140.

5. When the defendant pleads that the note was not stamped at its date, he must file an affidavit or declaration under oath. *Desilets v. Trahan*, 5 R. L., 52.

6. If a party who is summoned to admit or deny a signature appears and files a *défense en fait*, that is a denial of the signature. *Hart v. Burn*, 3 Rev. de Lég., 38, K. B., & *Perrault v. Girard*, 3 Rev. de Lég., 196.

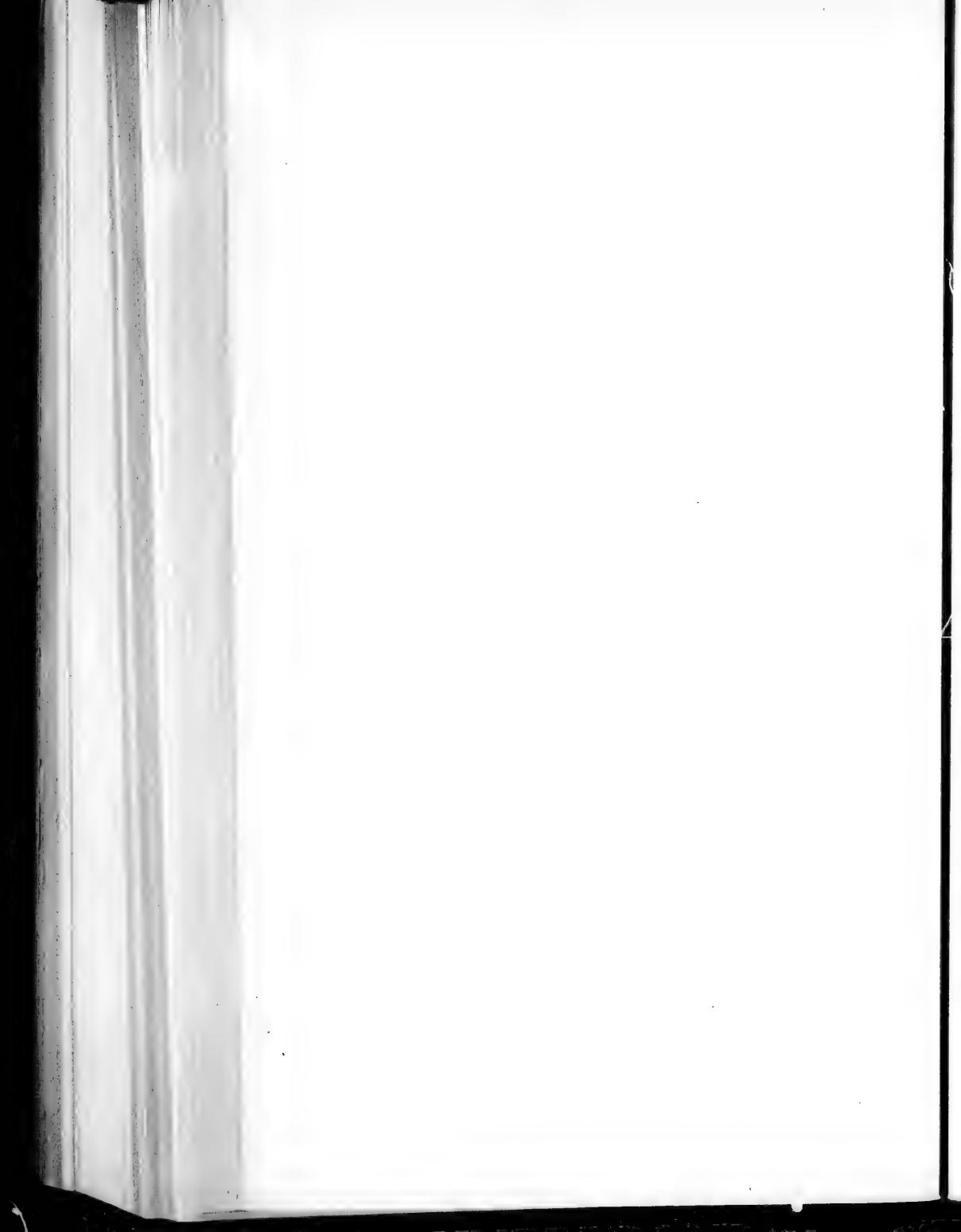
7. In an action against the endorser of a promissory note the defendant pleaded that the signature which purported to be his was not written by him or with his knowledge, consent or authority, and that he was not aware of the existence of the promissory note until notified of the protest. At the hearing it was urged by the plaintiff that he was entitled to judgment as the affidavit was not in the form required by law. The defendant thereupon made a motion that the *délibéré* be discharged, and that he be permitted to file another affidavit. This motion was rejected, and judgment went for plaintiff, but on appeal—*Held*, that the affidavit was sufficient and the allegations of the plea being proved, the judgment of the court below was reversed, and judgment went for the appellant. *Browne & Dow*, 11 L. C. R. 273, Q. B. & 10 L. C. R. 442, S. C. 1861.

8. Where a defendant to an action on a promissory note pleaded want of notice of protest, and the plaintiff contended that the plea should be dismissed on the ground that it was filed without the affidavit accompanying it under sec. 87 of the act of 1857—*Held*, that as the certificate of the notary showed that the notice he served was utterly useless, an affidavit such as provided by the statute was unnecessary. *Hobbs in re & Harte* 5 L. C. J. 52.

9. Where to an action against the endorser of a promissory note by the endorsee, the defendant pleaded that no sufficient protest of the note had been made, and moreover, that at the time he endorsed it, the endorser, that is the plaintiff, verbally agreed to accept it on the credit of the maker alone without recourse against defendant—*Held*, reversing the judgment of the court below, that although the protest appeared to be insufficient on the face of the note, it would, nevertheless, be held to have been regularly and legally made, unless with the plea an affidavit had been produced that such notice was not regularly made. *Chamberlain & Ball*, 5 L. C. J., 88 & 11 L. C. R., 50.

10. In an action on a promissory note, where want of notice of protest was invoked,—*Held*, that the party pleading such want of notice was bound to produce therewith the affidavit required by 20 Vic., cap. 44, sec. 87. *Ryan v. Malo*, 12 L. C. R., 8.

11. An action was brought in Montreal on a promissory note dated in Montreal but really made in another district.—*Held*, that a declinatory exception would lie, even though not accompanied by affidavit, and the action was dismissed. *Hudon v. Champagne*, 17 L. C. J., 45. See above page 557.



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(*) Under the constitution of the Dominion of Canada, all Statutes of the Parliament of Canada must be published in the English and French languages.

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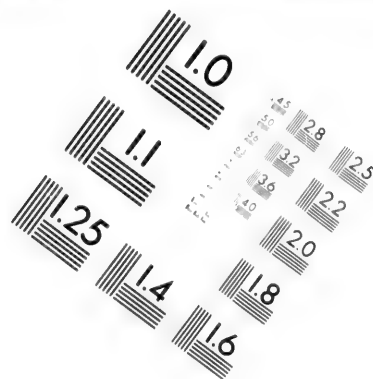
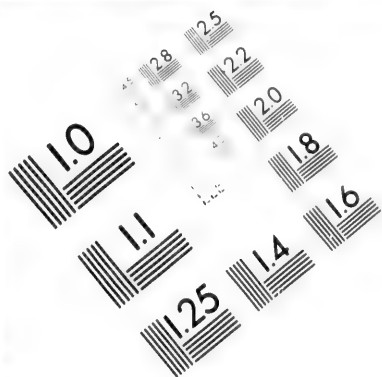
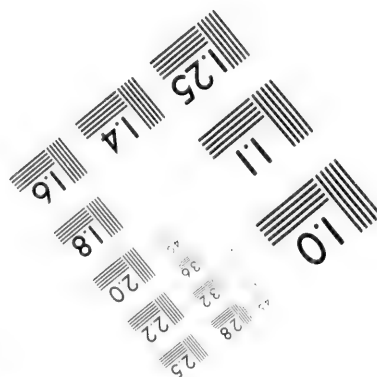
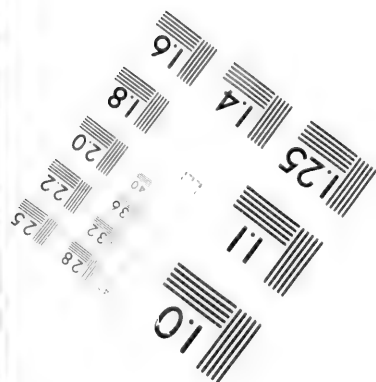
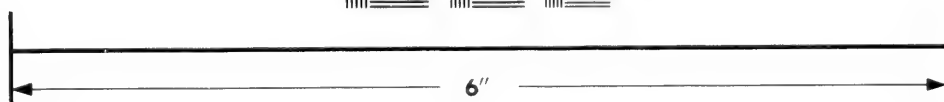
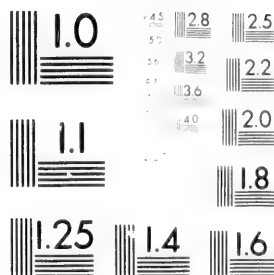


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